

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**TWENTY-FIFTH STATE LEGISLATURE**  
**STATE OF HAWAII**

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**REGULAR SESSION**  
**2009**

Convened on Wednesday, January 21, 2009 and  
Adjourned sine die on Friday, May 8, 2009

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**SPECIAL SESSION**  
**2009**

Convened on Wednesday, July 15, 2009 and  
Adjourned sine die on Wednesday, July 15, 2009

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Published under Authority of  
Section 23G-13, Hawaii Revised Statutes  
by the  
Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii

## **PREFACE**

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular and Special Sessions of 2009.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

**Ken H. Takayama**  
Revisor of Statutes

Honolulu, Hawaii  
July 15, 2009

**STATE OF HAWAII**  
**ELECTED OFFICIALS AND LEGISLATIVE OFFICERS**

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**UNITED STATES CONGRESS**

Senate:  
Daniel K. Inouye  
Daniel K. Akaka

House of Representatives:  
Neil Abercrombie  
Mazie Hirono

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**STATE EXECUTIVE OFFICERS**

Governor of Hawaii..... Linda Lingle  
Lieutenant Governor ..... James R. Aiona, Jr.

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**OFFICERS AND MEMBERS OF THE  
TWENTY-FIFTH STATE LEGISLATURE  
REGULAR AND SPECIAL SESSIONS  
2009**

**SENATE**

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Vice President ..... Russell S. Kokubun  
Clerk..... Carol Taniguchi

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Eleventh District—(Oahu)  
Carol Fukunaga (D)

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Russell S. Kokubun (D)

Twelfth District—(Oahu)  
Brickwood Galuteria (D)

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Josh Green, M.D. (D)

Thirteenth District—(Oahu)  
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Fourth District—(Maui)  
Shan S. Tsutsui (D)

Fourteenth District—(Oahu)  
Donna Mercado Kim (D)

Fifth District—(Maui)  
Rosalyn H. Baker (D)

Fifteenth District—(Oahu)  
Norman Sakamoto (D)

Sixth District—(Maui/Molokai/Lanai)  
J. Kalani English (D)

Sixteenth District—(Oahu)  
David Y. Ige (D)

Seventh District—(Kauai/Niihau)  
Gary L. Hooser (D)

Seventeenth District—(Oahu)  
Michelle Kidani (D)

Eighth District—(Oahu)  
Sam Slom (R)

Eighteenth District—(Oahu)  
Clarence K. Nishihara (D)

Ninth District—(Oahu)  
Les Ihara, Jr. (D)

Nineteenth District—(Oahu)  
Mike Gabbard (D)

Tenth District—(Oahu)  
Brian T. Taniguchi (D)

Twentieth District—(Oahu)  
Will Espero (D)

Twenty-First District—(Oahu)  
Colleen Hanabusa (D)

Twenty-Fourth District—(Oahu)  
Jill N. Tokuda (D)

Twenty-Second District—(Oahu)  
Robert Bunda (D)

Twenty-Fifth District—(Oahu)  
Fred Hemmings (R)

Twenty-Third District—(Oahu)  
Clayton Hee (D)

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# HOUSE OF REPRESENTATIVES

Speaker ..... Calvin K. Y. Say  
 Vice Speaker ..... Michael Y. Magaoay  
 Clerk ..... Patricia A. Mau-Shimizu

---

First District—(Hawaii) Mark M. Nakashima (D)	Seventeenth District—(Oahu) Gene Ward, Ph.D. (R)
Second District—(Hawaii) Jerry L. Chang (D)	Eighteenth District—(Oahu) Lyla B. Berg, Ph.D. (D)
Third District—(Hawaii) Clift Tsuji (D)	Nineteenth District—(Oahu) Barbara Marumoto (R)
Fourth District—(Hawaii) Faye P. Hanohano (D)	Twentieth District—(Oahu) Calvin K. Y. Say (D)
Fifth District—(Hawaii) Robert N. Herkes (D)	Twenty-First District—(Oahu) Scott Y. Nishimoto (D)
Sixth District—(Hawaii) Denny Coffman (D)	Twenty-Second District—(Oahu) Scott K. Saiki (D)
Seventh District—(Hawaii) Cindy Evans (D)	Twenty-Third District—(Oahu) Tom Brower (D)
Eighth District—(Maui) Joseph M. Souki (D)	Twenty-Fourth District—(Oahu) Isaac W. Choy (D)
Ninth District—(Maui) Gilbert S. C. Keith-Agaran <sup>1</sup> (D)	Twenty-Fifth District—(Oahu) Della Au Belatti (D)
Tenth District—(Maui) Angus L. K. McKelvey (D)	Twenty-Sixth District—(Oahu) Sylvia J. Luke (D)
Eleventh District—(Maui) Joe Bertram III (D)	Twenty-Seventh District—(Oahu) Corinne W. L. Ching (R)
Twelfth District—(Maui) Kyle T. Yamashita (D)	Twenty-Eighth District—(Oahu) Karl Rhoads (D)
Thirteenth District—(Maui/Molokai/Lanai) Mele Carroll (D)	Twenty-Ninth District—(Oahu) Joey Manahan (D)
Fourteenth District—(Kauai) Hermine M. Morita (D)	Thirtieth District—(Oahu) John Mizuno (D)
Fifteenth District—(Kauai) James Kunane Tokioka (D)	Thirty-First District—(Oahu) Glenn Wakai (D)
Sixteenth District—(Kauai/Niihau) Roland D. Sagum III (D)	Thirty-Second District—(Oahu) Lynn Finnegan (R)

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<sup>1</sup>Appointed to seat vacated by the death of Bob Nakasone.

Thirty-Third District—(Oahu) Blake K. Oshiro (D)	Forty-Third District—(Oahu) Kymberly Marcos Pine (R)
Thirty-Fourth District—(Oahu) K. Mark Takai (D)	Forty-Fourth District—(Oahu) Karen Leinani Awana (D)
Thirty-Fifth District—(Oahu) Henry J. C. Aquino (D)	Forty-Fifth District—(Oahu) Maile S. L. Shimabukuro (D)
Thirty-Sixth District—(Oahu) Roy M. Takumi (D)	Forty-Sixth District—(Oahu) Michael Y. Magaoay (D)
Thirty-Seventh District—(Oahu) Ryan I. Yamane (D)	Forty-Seventh District—(Oahu) Jessica Wooley (D)
Thirty-Eighth District—(Oahu) Marilyn B. Lee (D)	Forty-Eighth District—(Oahu) Ken Ito (D)
Thirty-Ninth District—(Oahu) Marcus R. Oshiro (D)	Forty-Ninth District—(Oahu) Pono Chong (D)
Fortieth District—(Oahu) Sharon E. Har (D)	Fiftieth District—(Oahu) Cynthia H. Thielen (R)
Forty-First District—(Oahu) Jon Riki Karamatsu (D)	Fifty-First District—(Oahu) Chris Lee (D)
Forty-Second District—(Oahu) Rida T. R. Cabanilla (D)	

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**Session Laws of Hawaii  
Passed By The  
Twenty-Fifth State Legislature  
Regular Session  
2009**

**ACT 1**

**H.B. NO. 302**

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, and the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,125,681 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the senate up to and including June 30, 2010, including the 2009 regular session, twenty-fifth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2009 and 2010 regular sessions.

The sum appropriated in this section shall be expended by the senate.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,503,163 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the house of representatives up to and including June 30, 2010, including the 2009 regular session, twenty-fifth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2009 and 2010 regular sessions.

The sum appropriated in this section shall be expended by the house of representatives.

SECTION 3. Payment of expenses of the senate during the interim between the 2009 and 2010 regular sessions shall be made only with the approval of the president of the senate, and payment of expenses of the house of representatives during the interim between the 2009 and 2010 regular sessions shall be made only with the approval of the speaker of the house of representatives.

SECTION 4. Before January 20, 2010, the senate and the house of representatives shall each have their accounts audited, and a full report of the respective audits shall be presented to the senate and to the house of representatives convening on January 20, 2010.

## ACT 1

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the legislature while traveling abroad on official business of the legislature shall be \$145 a day as authorized by the president of the senate and the speaker of the house of representatives.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,654,977 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,619,685 for defraying the expenses of the office of the auditor during fiscal year 2009-2010;
- (2) The sum of \$885,292 for defraying the expenses of the office of the state ethics commission during fiscal year 2009-2010; and
- (3) The sum of \$150,000 during fiscal year 2009-2010 for:
  - (A) Performing special studies;
  - (B) Improving capabilities for planning, programming, and budgeting;
  - (C) Fulfilling other special requests made of the auditor by the legislature or jointly by the president of the senate and the speaker of the house of representatives;
  - (D) Legislative studies and contractual services for those studies; and
  - (E) Such other purposes as may be determined by the joint action of the president of the senate and the speaker of the house of representatives.

The sum appropriated in this section shall be expended by the auditor.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,550,828 or so much thereof as may be necessary to the office of the auditor during fiscal year 2009-2010 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$6,300,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2009-2010 for the auditor to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,113,126 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2009-2010, including equipment relating to computer systems programming and operations.

The sum appropriated in this section shall be expended by the legislative reference bureau.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,060,728 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2009-2010.

The sum appropriated in this section shall be expended by the ombudsman.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$900,000 to the senate; and
- (2) \$900,000 to the house of representatives.

This appropriation shall be used to pay for hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

The sums appropriated in this section shall be expended by the senate and the house of representatives, respectively.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings.

The sum appropriated in this section shall be expended by the legislature for the purposes of this section.

SECTION 13. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2010, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 14. Act 1, Session Laws of Hawaii 2008, is amended by amending section 8 to read as follows:

“SECTION 8. There is appropriated out of the audit revolving fund the sum of ~~[\$5,600,438]~~ \$6,300,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2008-2009 for the auditor to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.”

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 17. This Act shall take effect upon its approval.

(Approved February 18, 2009.)

## ACT 2

S.B. NO. 412

A Bill for an Act Relating to the Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 8-12, Hawaii Revised Statutes, is amended to read as follows:

~~“[§8-12] World Ocean Day. [The first Wednesday of June shall be known and designated as Ocean Day, in recognition of the very significant role the ocean plays in the lives of Hawaii's people, as well as Hawaii's culture, history, and traditions. This day is not and shall not be construed as a state holiday.]~~  
June 8 of each year shall be known and recognized as “World Ocean Day” to cel-

## ACT 3

celebrate and honor the oceans of the world, improve international relations, and increase public awareness of conservation management of the ocean environment; provided that this day is not and shall not be construed to be a state holiday. All citizens shall be encouraged to observe and celebrate the blessings of the oceans and endeavor to become caretakers of the ocean for future generations."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 1, 2009.)

## ACT 3

H.B. NO. 442

A Bill for an Act Relating to the Labor and Industrial Relations Appeals Board.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to authorize the labor and industrial relations appeals board (appeal board) to utilize a hearings officer. Utilizing a hearings officer would allow the appeal board to expedite hearings on workers' compensation matters, including treatment plan issues, vocational rehabilitation issues, and temporary total disability issues. The hearings officer would hear these issues and propose a decision and order for review and approval by the full appeal board. This would afford expedited resolution of time-sensitive matters appealed from decisions of the director of labor and industrial relations to the appeal board.

SECTION 2. Section 371-4, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The chairperson of the appeal board shall be responsible for the administrative functions of the appeal board. The appeal board may:

- (1) Appoint an executive officer and hearings officer, and employ other employees as it deems necessary in the performance of its functions;
- (2) Set the duties and compensation of the executive officer, hearings officer, and employees; and
- (3) Provide for the reimbursement of actual and necessary expenses incurred by the executive officer, hearings officer, and employees in the performance of their duties, within the amounts made available by appropriations therefor.

Members of the appeal board and employees other than clerical and stenographic employees shall be exempt from chapters 76 and 89. Clerical and stenographic employees shall be employed in accordance with chapter 76."

SECTION 3. Section 371-6, Hawaii Revised Statutes, is amended to read as follows:

**"§371-6 Powers respecting oaths, subpoenas, etc.; witness fees, expenses, immunities.** In all hearings or investigations conducted by the director of labor and industrial relations, or any of the director's duly authorized subordinates, including a hearings officer appointed by the appeal board under section 371-4,

or the ~~[labor and industrial relations]~~ appeal board, with respect to any matters cognizable by any of them, each of the officers, and each member of the board, shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses, as are possessed by a circuit court and may take depositions and certify to official acts. The circuit court of any circuit upon application by any of them shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration for the department of labor and industrial relations.

No person shall be excused from attending or testifying or producing material, books, papers, correspondence, memoranda, and other records, before the director, the director's duly authorized subordinate, including a hearings officer appointed by the appeal board under section 371-4, or the appeal board, or in obedience to the subpoena of any of them, in any cause or proceeding before them, on the grounds that the testimony and evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed the individual's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that ~~[such]~~ the individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 9, 2009.)

## ACT 4

H.B. NO. 520

A Bill for an Act Relating to Buildings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to repeal the amendments made by Act 228, Session Laws of Hawaii 2008, which require the taking of photographs of actual or potential historic buildings before demolition, construction, or other alteration of the buildings.

SECTION 2. Section 6E-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or in the event it has already begun, continued,

until the department shall have given its written concurrence. ~~[In the case of any building that is eligible for listing or is listed on the Hawaii or national register of historic places, no demolition, construction, or other alteration of the building shall occur until after the responsible agency, officer, or county has transmitted archival-quality black and white photographs of the historic building to the department.]~~

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor, who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department."

SECTION 3. Section 6E-10, Hawaii Revised Statutes, is amended to read as follows:

**"§6E-10 Privately owned historic property.** (a) Before any construction, alteration, disposition or improvement of any nature, by, for, or permitted by a private landowner may be commenced which will affect an historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department opportunity for review of the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department shall have given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall:

- (1) Commence condemnation proceedings for the purchase of the historic property if the department and property owner do not agree upon an appropriate course of action;
- (2) Permit the owner to proceed with the owner's construction, alteration, or improvement; or
- (3) In coordination with the owner, undertake or permit the investigation, recording, preservation, and salvage of any historical information deemed necessary to preserve Hawaiian history, by any qualified agency for this purpose.

~~[(b) In the case of any building over fifty years old, no demolition, construction, or other alteration of the building shall occur until after the owner has transmitted to the department, at the owner's expense, archival-quality black and white photographs of the building.]~~

~~(e)]~~ (b) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in or on an historic property that does not involve a change in design, material, or outer appearance or change in those characteristics which qualified the historic property for entry onto the Hawaii register of historic places.

~~[(d)]~~ (c) Any person, natural or corporate, who violates the provisions of this section shall be fined not more than \$1,000, and each day of continued violation shall constitute a distinct and separate offense under this section for which the offender may be punished.

~~[(e)]~~ (d) If funds for the acquisition of needed property are not available, the governor may, upon the recommendation of the department allocate from the contingency fund an amount sufficient to acquire an option on the property

or for the immediate acquisition, preservation, restoration, or operation of the property.

[(f)] (e) The department may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. Whenever any member of the department duly authorized to conduct investigations and surveys of an historic or cultural nature determines that entry onto private lands for examination or survey of historic or cultural finding is required, the department shall give written notice of the finding to the owner or occupant of such property at least five days prior to entry. If entry is refused, the member may make a complaint to the district court in the circuit in which such land is located. The district court may thereupon issue a warrant, directed to any police officer of the circuit, commanding the officer to take sufficient aid, and, being accompanied by a member of the department, between the hours of sunrise and sunset, allow the member of the department to examine or survey the historic or cultural property.”

SECTION 4. Section 46-3.5, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 6. This Act shall take effect upon approval.

(Approved April 14, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 5

S.B. NO. 1130

A Bill for an Act Relating to the Bureau of Conveyances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow the redaction of social security numbers on judgments, decrees, and court orders so that the documents may be recorded at the bureau of conveyances.

SECTION 2. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

**“§501-151 Pending actions, judgments; recording of, notice.** No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number,

State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter "judgment" includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a court of the State of Hawaii, may be recorded.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded."

SECTION 3. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

**"§502-33 Identification of reference to registration of original.** The registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code. This section does not apply to any document mentioned herein executed prior to April 13, 1915.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded."

SECTION 4. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:



**“§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it the Hawaii tax identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the debtor has no social security number, Hawaii tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor’s attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102 and sections 501-241 to 501-248 shall govern.

The party seeking to record or register a judgment, order, or decree shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment, order, or decree to be recorded or registered.”

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 16, 2009.)

## ACT 6

S.B. NO. 108

A Bill for an Act Relating to Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:5-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 560:5-113 shall be given to the parents and to a minor who has attained fourteen years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship shall not exceed ~~[six]~~ twelve months. Within

## ACT 7

five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 560:5-205.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 16, 2009.)

## ACT 7

S.B. NO. 942

A Bill for an Act Relating to Underground Storage Tanks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to conform the State’s underground storage tank laws to the requirements of the federal Energy Policy Act of 2005, P.L. 109-58, to ensure department of health eligibility for federal grants.

SECTION 2. Chapter 342L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342L- Delivery, deposit, and acceptance prohibition.** No person shall deliver to, deposit into, or accept a regulated substance into an underground storage tank regulated under this chapter at a facility that has been identified by the department to be ineligible for such delivery, deposit, or acceptance. The delivery prohibition may go into effect at a facility before a hearing is conducted by the director.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 8

S.B. NO. 936

A Bill for an Act Relating to Department of Health Certificates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 445-94, Hawaii Revised Statutes, is amended to read as follows:

**“§445-94 Certificates.** ~~[(a) No person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the person secures from the department of health a certifi-~~

~~state setting forth that an agent of the department has examined the building or buildings, with a description sufficient to identify and locate the same, and that the same are in good sanitary condition.~~

(b)] No person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the person secures a clearance from the appropriate county agency responsible for ensuring compliance with county building and zoning codes setting forth that an agent of the agency has examined the building or buildings, proposed to be used for such purposes, with a description sufficient to identify and locate the same; and that the same are in compliance with the building and zoning codes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 20, 2009.)

## ACT 9

S.B. NO. 574

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 244, Session Laws of Hawaii 2007, is amended by amending section 12 to read as follows:

“SECTION 12. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 shall take effect retroactive to July 1, 2006; provided further that section 514A-121.5(b) to (j), Hawaii Revised Statutes, in section 2 of this Act shall be repealed on June 30, [2009.] 2011; provided further that cases pending before the office of administrative hearings of the department of commerce and consumer affairs as part of the condominium dispute resolution pilot project established by section 28 of Act 164, Session Laws of Hawaii 2004, on June 30, 2006, that may have been dismissed due to the repeal of part VII of chapter 514A, Hawaii Revised Statutes, shall be reinstated and subject to section 514A-121.5, Hawaii Revised Statutes, in section 2 of this Act.”

SECTION 2. Act 205, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, [2009.] 2011.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 2009.

(Approved April 20, 2009.)

## A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 39, Session Laws of Hawaii 2000, took effect in April 2000 and authorized condominium associations to collect up to six months of maintenance fees or \$1,800, whichever was less, in connection with the foreclosure of a condominium apartment. Prior to Act 39, associations frequently received nothing from the sale of an apartment in foreclosure because all of the proceeds from the foreclosure auction would go to the holder of the first mortgage. The purpose of Act 39 was to allow condominium associations some recovery from the foreclosure of the condominium apartment, even if the holder of the first mortgage was not paid in full. The provision recognized that, since the association maintained and insured the condominium apartment and the project in which it was located, the association should recover something from the foreclosure of the apartment.

The “cap” or limit of \$1,800 on the association’s recovery was based on information that the average monthly maintenance fee in 2000 was \$300 per month. However, nine years later, the average monthly maintenance fee is now well over \$400 per month. Therefore, retaining the \$300 amount unfairly limits the association’s recovery in a foreclosure.

The purpose of this Act is to increase the cap on an association’s recovery to six months of maintenance fees or \$3,600, whichever is less. In this way, associations will continue to receive a fair share of the proceeds from the foreclosure auction of a condominium apartment, to compensate the association for its role in maintaining the value of the condominium apartment, before, during, and after the foreclosure.

SECTION 2. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (h) to read:

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~\$1,800.~~] \$3,600.”

SECTION 3. Section 514B-146, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~\$1,800.~~] \$3,600.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 20, 2009.)

## ACT 11

S.B. NO. 92

A Bill for an Act Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [11-193(a)(5)] 11-213.5 and 11-215(c).”

SECTION 2. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [11-193(a)(5)] 11-213.5 and 11-215(c).”

SECTION 3. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

**“§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier’s check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) The sum from all general excise tax revenues realized by the State that represents the difference between \$45,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; and
- (2) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund; and
- (3) ~~A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information management systems special fund for each fiscal year shall be limited to amounts appro-~~

~~printed by the legislature. This paragraph shall be repealed on July 1, 2005].~~

SECTION 4. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section ~~[[205-2(d)(10)]]~~ 205-2(d) (11) or ~~[[205-4.5(a)(13)]]~~ shall only be required pursuant to section 205-5(b);
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
  - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
  - (B) A shoreline area as defined in section 205A-41; or
  - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
  - (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
  - (B) Waste-to-energy facility;
  - (C) Landfill;

- (D) Oil refinery; or
- (E) Power-generating facility.”

SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§431:6-322 Common trust funds; mutual funds; and ~~[[exchange]]~~ traded funds.”**

SECTION 6. Section 431:19-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner may issue a certificate of authority to transact insurance and reinsurance business as a special purpose financial captive insurance company in this State that shall be valid through the term of the insurance securitization and automatically renewed each April 1 following the date of initial issuance, except as provided for in section 431:19-212, and upon the commissioner’s finding that:

- (1) The proposed plan of operation provides for a reasonable and expected successful operation;
- (2) The terms of the special purpose financial captive insurance company contract and related transactions comply with this part; and
- (3) The insurance regulator of the home domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or has not disapproved the transaction; provided that the commissioner shall not be precluded from issuing or renewing a certificate of authority ~~[[in the event that]]~~ the insurance regulator of the home domicile of a counterparty has not responded with respect to all or any part of the transaction.”

SECTION 7. Section 431:19-209, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall not:

- (1) Issue or otherwise administer primary insurance contracts;
- (2) Enter into a special purpose financial captive insurance company contract with a counterparty that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;
- (3) Enter into a special purpose financial captive insurance contract that contains any provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the contract to any person other than the counterparty or receiver;
- (4) Have any direct obligation to the policyholders or reinsured of the counterparty; or
- (5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from anyone convicted of a felony, anyone convicted of a criminal offense involving the conversion or misappropriation of funds, including fiduciary funds or insurance amounts, or theft, deceit, fraud, misrepresentation, embezzlement, or ~~[[corruption, or anyone]]~~ whom the commissioner has cause to believe has violated, is violating, or is about to violate any provision of this code, any order of the commissioner, or undertakes or plans to undertake any

action that may cause the special purpose financial captive insurance company to be in a condition as to render the continuance of the special purpose financial captive insurance company's business hazardous to the public or to the holders of the special purpose financial captive insurance company contracts or special purpose financial captive insurance company securities."

SECTION 8. Section 451J-7, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§451J-7]** **Application for licensure.** Any person who files an application with the department after December 31, 1998, shall be issued a license by the department if the applicant provides satisfactory evidence to the department that the applicant is qualified for licensure pursuant to the requirements of this chapter and meets the following qualifications:

- (1) Has completed a master's degree or doctoral degree from an accredited educational institution in marriage and family therapy or in an allied field related to the practice of mental health counseling which includes or is supplemented by graduate level course work comprising a minimum of thirty-three semester, or forty-four quarter hours in the following course areas:
  - (A) Marriage and family studies—nine semester or twelve quarter hours;
  - (B) Marriage and family therapy studies—nine semester or twelve quarter hours;
  - (C) Human development—nine semester or twelve quarter hours;
  - (D) Ethical and professional studies—three semester or four quarter hours; ~~[or]~~ and
  - (E) Research—three semester or four quarter hours;
- (2) Has one year practicum with three hundred hours supervised client contact;
- (3) Completes one thousand hours of direct marriage and family therapy, and two hundred hours clinical supervision in not less than twenty-four months; and
- (4) Has passed the National Marriage and Family Therapy Exam in accordance with section 451J-8.

An individual who is a clinical member of the association shall be deemed to have met the educational and clinical experience requirements of this section."

SECTION 9. Section 846-30.5, Hawaii Revised Statutes, is amended to read as follows:

"**§846-30.5 Expiration date.** Every certificate of identification issued under this part, whether an original or a renewal, shall bear an expiration date which shall be on the person's birthday, six years after the year of issuance; provided that if the person is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the person's ~~[Immigration and Naturalization Service]~~ U.S. Citizenship and Immigration Services departure card (I-94). All certificates of identification issued without expiration dates shall expire on December 31, 1999. To provide for the transition to expiration dates that are birthdays of the persons issued certificates, any certificate issued to a person with an expiration date other than the birthday of that person in the



year of expiration shall expire on that person's last birthday immediately preceding the certificate's stated expiration date."

SECTION 10. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of "sexual offense" to read as follows:

"Sexual offense" means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6, 712-1202(1)(b), or 712-1203(1)(b), but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
  - (A) Criminal sexual conduct toward a minor, including but not limited to an offense set forth in section 707-759;
  - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
  - (C) Use of a minor in a sexual performance;
  - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
  - (E) Electronic enticement of a child chargeable under section 707-756[, or 707-757[, or 707-758]] if the offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in this section [846E-1]; or
  - (F) Solicitation of a minor to practice prostitution;
- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4)."

SECTION 11. Act 9, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval[-]; provided that the amendments made to section 461-1, Hawaii Revised Statutes, by section 3 of this Act, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004."

SECTION 12. Act 28, Session Laws of Hawaii 2008, is amended by amending section 43 to read as follows:

"SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that:

- (1) Section 3(2) shall be repealed on June 30, 2008;
- (2) Sections 3(3) and [(23)] 23 shall take effect on July 1, 2008; and

- (3) The amendments to section 237-24.3, Hawaii Revised Statutes, by section 26 of this Act shall not be repealed when that section is reenacted on December 31, 2009, by section 4 of Act 239, Session Laws of Hawaii 2007.”

SECTION 13. Act 106, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2011[-]; provided that section 304A-225.1, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 14. Act 120, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on July 1, 2013[-]; provided that section 431:2-201.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 15. Act 128, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2011[-]; provided that sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 16. Act 154, Session Laws of Hawaii 2008, is amended by amending the prefatory language in section 27 to read as follows:

“SECTION 27. Section ~~[626-1-505.5]~~ 626-1, Hawaii Revised Statutes, is amended by amending subsection (d) of rule 505.5 to read as follows:”

SECTION 17. Act 171, Session Laws of Hawaii 2008, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 2008; provided that sections 2 through 11 shall take effect on July 1, 2010; provided further that sections 15 and 16 shall be repealed on June 30, 2010[-]; and provided further that sections 287-20(a) and 291E-61(g), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 18. Act 177, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval, and shall be repealed two years from the date of its approval[-]; provided that section 431:7-101(a) and (b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 19. Act 180, Session Laws of Hawaii 2008, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2008 and shall be repealed on July 1, 2010[-]; provided that sections 586-4(e) and 586-11(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 20. Act 212, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on January 1, 2013[-]; provided that sections 461-1 and 461-14, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act; and provided further that the amendments made to section 461-1, Hawaii Revised Statutes, by this Act, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 21. Act 226, Session Laws of Hawaii 2008, is amended by amending section 16 to read as follows:

“SECTION 16. This Act shall take effect on July 1, 2008[-]; provided that the amendments made to section 437D-8.4(a), Hawaii Revised Statutes, by this Act, shall not be repealed when section 437D-8.4, Hawaii Revised Statutes, is reenacted on December 31, 2022, pursuant to Act 247, Session Laws of Hawaii 2005.”

SECTION 22. Act 227, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 2011[-]; provided that section 431:13-103(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 23. Act 11, First Special Session Laws of Hawaii 2008, is amended by amending section 15 to read as follows:

“SECTION 15. This Act shall take effect on July 1, 2008[-]; provided that section 2 shall take effect on June 29, 2008.”

SECTION 24. Chapter 235D, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 237-27.1, Hawaii Revised Statutes, is repealed.

## PART II

SECTION 26. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

**“§92-28 State service fees; increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459, [460,] 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K, 467,

- 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
  - (3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapter 304A shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
  - (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
  - (5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
  - (6) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5."

SECTION 27. Section 235-1, Hawaii Revised Statutes, is amended by amending the definition of "person totally disabled" to read as follows:

"Person totally disabled" means a person who is totally and permanently disabled, either physically or mentally, which results in the person's inability to engage in any substantial gainful business or occupation.

The disability shall be certified to by (1) a physician or osteopathic physician licensed under chapter 453 [~~or 460, or both~~], (2) a qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides, or (3) a commissioned medical officer in the United States Army, Navy, Marine Corps, or Public Health Service, engaged in the discharge of one's official duty. Certification shall be on forms prescribed by the department of taxation."

SECTION 28. Section 246-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who is totally disabled, as defined in section 235-1, so long as the person is totally disabled, shall be exempt from real property taxes on all real property owned by the person up to, but not exceeding, a taxable value of \$15,000. The disability shall be certified to by a physician or osteopathic physician licensed under chapter 453 [~~or 460, or both~~], on forms prescribed by the department of taxation."

SECTION 29. Section 304A-1752, Hawaii Revised Statutes, is amended to read as follows:

"[~~§304A-1752~~] **Qualifications for residency program.** The school of medicine of the University of Hawaii shall recommend that two positions within the University of Hawaii medical residency program be filled each year, in accordance with this subpart, by persons who have the necessary qualifications, other than the qualification of residency training, to take the examination for licensure as physicians or osteopathic physicians under chapter 453 [~~or osteopathic physicians under chapter 460~~] and who volunteer to enter into contracts

under section [§304A-1753], regardless of whether they are graduates of the school of medicine of the University of Hawaii. The department of public safety and the department of health shall notify the school of medicine of the type of physicians or osteopathic physicians needed by the correctional facilities and by rural communities. The school of medicine shall establish procedures to provide for applications by, and selection of, persons who are qualified and interested to fill the positions.”

SECTION 30. Section 304A-1753, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1753] **Contract necessary for filling of positions.** In order to fill a position under this subpart, a person shall enter into a contract with the school of medicine of the University of Hawaii stating that the person:

- (1) Agrees to participate in the residency program for the minimum period required to qualify for the licensure examination under chapter 453 ~~[or 460]~~;
- (2) Agrees to obtain a permanent license to practice medicine and surgery or osteopathy under chapter 453 ~~[or osteopathy under chapter 460]~~, as soon as possible following termination of participation in the residency program;
- (3) Agrees to serve for two years as:
  - (A) An officer or employee of the department of public safety who is based in a correctional facility and whose normal course of duty requires medical treatment of inmates of the facility, another correctional facility, or both; or
  - (B) An officer or employee of the department of health who is employed to provide primary medical care to residents of and to be based in a rural community with a shortage of physicians; and
- (4) Agrees to commence fulfilling the requirement under paragraph (3) immediately following the termination of participation in the residency program and licensure.”

SECTION 31. Section 304A-1754, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1754] **Penalty for breach of contract.** A person who is placed in the residency program under this subpart, but who breaches any term of the contract under section [§304A-1753], shall pay to the State damages of \$10,000; provided that a contract shall not be deemed breached if the person has obtained a permanent license to practice medicine and surgery or osteopathy under chapter 453 ~~[or osteopathy under chapter 460]~~, but could not fulfill the requirements of section [§304A-1753(3) and (4)] because no employment vacancy existed in the correctional facilities of the department of public safety or no shortage of physicians or osteopathic physicians existed in any rural community and the department of public safety or the department of health, as applicable, certifies that no employment vacancy or shortage existed.”

SECTION 32. Section 304A-1755, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1755] **Residency program; defined.** For the purpose of this subpart, “residency program” means a graduate medical education program in a

hospital in this State that is accredited as a medical school residency program by the school of medicine of the University of Hawaii. The school of medicine may develop a special residency program for the purpose of this subpart; provided that the program, upon completion by the person, qualifies the person to take the licensure examination under chapter 453 [~~or 460~~].”

SECTION 33. Section 321-32, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~**§321-32**] **Epidemiological specialists.** Notwithstanding any other law to the contrary, epidemiological specialists may perform blood collection by venipuncture or capillary puncture and other methods of specimen collection, excluding catheterization, when employed by or acting as an agent of the department and when done under the direct or indirect supervision of a physician or osteopathic physician licensed pursuant to chapter 453 [~~or chapter 460~~].”

SECTION 34. Section 321-313, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~**§321-313**] **Definition of health care professional.** A health care professional means a physician or osteopathic physician as licensed under chapter 453 [~~and an osteopath as licensed under chapter 460~~].”

SECTION 35. Section 321-373, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~], or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.”

SECTION 36. Section 321-374, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Physicians or osteopathic physicians holding a valid unrevoked license under chapter 453 [~~or 460~~] are exempt from the requirements of this part.”

SECTION 37. Section 321-376, Hawaii Revised Statutes, is amended to read as follows:

“**§321-376 Facial tattoos.** Application of facial tattoos shall be prohibited except by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~], or by a tattoo artist who is under the general supervision of such a physician[~~-~~] or osteopathic physician.”

SECTION 38. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, osteopathic physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication that identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records is protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release is made from a physician or osteopathic physician licensed pursuant to chapter 453 ~~or 460~~ to the department of health to inform the sexual or needle sharing contact of an HIV seropositive patient where:
  - (A) There is reason for the physician or osteopathic physician to believe that the contact is or has been at risk of HIV transmission as a result of the index patient having engaged in conduct which is likely to transmit HIV; and
  - (B) The index patient has first been counseled by the physician or osteopathic physician of the need for disclosure and the patient is unwilling to inform the contact directly or is unwilling to consent to the disclosure of the index patient's HIV status by the physician, the osteopathic physician, or the department of health; provided that the identity of the index patient is not disclosed; and provided further that there is no obligation to identify or locate any contact. Any determination by a physician or osteopathic physician to disclose or withhold disclosure of an index patient's sexual contacts to the department of health pursuant to this subsection which is made in good faith shall not be subject to penalties under this part or otherwise subject to civil or criminal liability for damages under the laws of the State;
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce this part and to enforce rules adopted by the department concerning the control and treatment of HIV infection, ARC, and AIDS, or to the sexual or needle sharing contacts of an HIV seropositive index patient for purposes of contact notification as provided in paragraph (4); provided that the identity of the index patient, if known, shall not be disclosed; provided further that

release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance with this part;

- (6) Release of a child's records is made to the department of human services for the purpose of enforcing chapters 350 and 587;
- (7) Release of a child's records is made within the department of human services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;
- (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for twenty-four hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child's natural parents;
- (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient;
- (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking release of the records;
- (12) Disclosure by a physician[;] or osteopathic physician, on a confidential basis, of the identity of a person who is HIV seropositive and who also shows evidence of tuberculosis infection, to a person within the department of health as designated by the director of health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis; or
- (13) Release is made for the purpose of complying with sections 325-16.5 and 801D-4(b). Nothing in this section shall be construed to prohibit a victim to whom information is released pursuant to section 325-16.5 from requesting the release of information by a physician, osteopathic physician, or HIV counselor to a person with whom the victim shares a privileged relationship recognized by chapter 626; provided that prior to such release, the person to whom the information is to be released shall be required to sign a notice of HIV status disclosure advising them of the confidentiality provisions regard-



ing HIV test results and the penalties for unlawful disclosure to any person other than a designated physician, osteopathic physician, or HIV counselor.

As used in this part, unless the context requires otherwise:

“Medical emergency” means any disease-related situation that threatens life or limb.

“Medical personnel” means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient’s contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.”

SECTION 39. Section 327C-1, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Except as provided in subsection (b), a person shall be considered dead if, in the announced opinion of a physician or osteopathic physician licensed under part I of chapter 453, ~~[physician and surgeon licensed under chapter 460,]~~ physician or osteopathic physician excepted from licensure by section 453-2(b)(3), or registered nurse licensed under chapter 457, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory functions. Death will have occurred at the time when the irreversible cessation of the functions first coincided.

(b) In the event that artificial means of support preclude a determination that respiratory and circulatory functions have ceased, a person shall be considered dead if, in the opinion of an attending physician or osteopathic physician licensed under part I of chapter 453, ~~[attending physician and surgeon licensed under chapter 460,]~~ or attending physician or osteopathic physician excepted from licensure by section 453-2(b)(3), and of a consulting physician or osteopathic physician licensed under part I of chapter 453, ~~[consulting physician and surgeon licensed under chapter 460,]~~ or consulting physician or osteopathic physician excepted from licensure by section 453-2(b)(3), based on ordinary standards of current medical practice, the person has experienced irreversible cessation of all functions of the entire brain, including the brain stem. The opinions of the physicians or osteopathic physicians shall be evidenced by signed statements. Death will have occurred at the time when the irreversible cessation of all functions of the entire brain, including the brain stem, first occurred. Death shall be pronounced before artificial means of support are withdrawn and before any vital organ is removed for purposes of transplantation.

(c) When a part of a donor is used for direct organ transplantation under chapter 327, and the donor’s death is established by determining that the donor experienced irreversible cessation of all functions of the entire brain, including the brain stem, the determination shall only be made under subsection (b). The determination of death in all other cases shall be made under subsection (a). The physicians or osteopathic physicians making the determination of death shall not participate in the procedures for removing or transplanting a part, or in the care of any recipient.”

SECTION 40. Section 327E-2, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 ~~[or 460].~~”

SECTION 41. Section 327G-2, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 [~~or osteopathy under chapter 460~~].”

SECTION 42. Section 329-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

- (1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation or prosecution;
- (2) Registrants authorized under chapters 448, 453, [460,] and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant’s own patient;
- (3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter; or
- (4) Other state-authorized governmental prescription-monitoring programs.

Information disclosed to a registrant, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency.”

SECTION 43. Section 329-121, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person who is licensed to practice medicine or osteopathic medicine under [chapters] chapter 453 [~~and 460,~~] and is licensed with authority to prescribe drugs and is registered under section 329-32. “Physician” does not include physician’s assistant as described in section 453-5.3.”

SECTION 44. Section 338-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person licensed to practice medicine or osteopathic medicine under part I of chapter 453 or a practitioner of medicine, osteopathic medicine, or surgery excepted from licensure by section 453-2(b)(3) [~~or a person licensed to practice osteopathy under chapter 460~~].”

SECTION 45. Section 346-67, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Public assistance recipients in this State who receive medical assistance pursuant to this chapter shall be allowed coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 [~~or 460~~].

The department shall adopt rules pursuant to chapter 91 to effectuate this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 46. Section 346C-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An individual qualifying for long-term care services under the program shall have written certification from a physician or osteopathic physician licensed under chapter 453 ~~or 460,~~ or an advanced practice registered nurse recognized under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

- (1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
- (2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.”

SECTION 47. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “health care provider” to read as follows:

““Health care provider” means a person qualified by the director to render health care and service and who has a license for the practice of:

- (1) Medicine or osteopathy under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- ~~[(4) Osteopathy under chapter 460;~~
- ~~[(5)]~~ (4) Naturopathy under chapter 455;
- ~~[(6)]~~ (5) Optometry under chapter 459;
- ~~[(7)]~~ (6) Podiatry under chapter 463E; and
- ~~[(8)]~~ (7) Psychology under chapter 465.”

SECTION 48. Section 386-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All health care providers rendering health care and services under this chapter shall be qualified by the director and shall remain qualified by satis-

fying the requirements established in this section. The director shall qualify any person initially who has a license for the practice of:

- (1) Medicine or osteopathy under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- ~~[(4) Osteopathy under chapter 460;~~
- ~~(5)~~ (4) Naturopathy under chapter 455;
- ~~[(6)]~~ (5) Optometry under chapter 459;
- ~~[(7)]~~ (6) Podiatry under chapter 463E; and
- ~~[(8)]~~ (7) Psychology under chapter 465.”

SECTION 49. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, ~~[460,]~~ 461, 463E, 465, 466, 471, and 605, and section 554-2.”

SECTION 50. Section 431:10A-120, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Each policy of accident and health or sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all accident and health or sickness insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 ~~[or 460]~~.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician

and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 51. Section 431:10C-308.7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) For the purposes of this section, the term “health care provider” means any person who is licensed to provide health care services pursuant to chapters 436E, 442, 448, 452, 453, 455, 457G, 459, [460,] 461J, 463E, and 465.”

SECTION 52. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person licensed in the practice of medicine or osteopathy pursuant to chapter 453 [~~or 460, respectively~~].”

SECTION 53. Section 432:1-609, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All individual and group hospital and medical service plan contracts and medical service corporation contracts under this chapter shall provide coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its members or dependents of the member in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 [~~or 460~~].

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inherited metabolic disease; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 54. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any health maintenance organization granted a certificate of authority under this chapter shall not be deemed to be practicing medicine or osteopathic medicine and shall be exempt from the provision of chapter 453 relating to the practice of medicine or osteopathic medicine [~~or chapter 460 relating to the practice of osteopathic medicine~~].”

SECTION 55. Section 432E-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§432E-1.5]]~~ **Licensure of managed care plan medical directors.** The medical director of any managed care plan providing services in the State shall hold an unlimited license to practice medicine or osteopathic medicine in the State pursuant to chapter 453 [~~or 460~~].”

SECTION 56. Section 435E-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” or “surgeon” means any person licensed to practice medicine or osteopathic medicine under chapter 453 [~~or 460~~]; or any professional corporation, partnership, or other entity whose stockholders or partners are comprised solely of persons licensed under chapter 453 [~~or 460~~].”

SECTION 57. Section 436E-3.5, Hawaii Revised Statutes, is amended to read as follows:

“**§436E-3.5 Physicians and osteopaths not exempt.** Persons licensed under [~~chapters~~] chapter 453 [~~and 460~~] who desire to practice acupuncture shall be subject to licensing under this chapter.”

SECTION 58. Section 440E-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No mixed martial arts event shall take place unless the director has granted a permit for the proposed event. In addition, the director shall not allow any mixed martial arts contest unless:

- (1) The contest consists of not more than five rounds of a duration of not more than five minutes each with an interval of at least one minute between each round and the succeeding round;
- (2) Each contestant is at least eighteen years of age, is not disqualified from competing in a similar mixed martial arts contest in another jurisdiction at the time of the contest, and does not use stimulants or banned substances before or during the contest;
- (3) Each mixed martial arts contestant is examined one hour prior to the contest by at least one physician or osteopathic physician licensed under chapter 453 [~~or 460~~] who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein;
- (4) Each contestant furnishes to the director:
  - (A) A medical report of a medical examination completed not less than six months before the contest, at the sole expense of the promoter, including the results of HIV and hepatitis testing; and
  - (B) Previous fight records that establish the contestant’s fitness to compete in the contest;
- (5) The contest is under the control of a licensed referee in the ring who has at least one year of experience in refereeing a match or exhibi-

tion involving mixed martial arts and who has passed a physical examination by a physician or osteopathic physician licensed under chapter 453 ~~[or 460]~~, including an eye examination, within two years prior to the contest;

- (6) The promoter has complied with sections 440E-6 and 440E-7; and
- (7) All licensees have complied with the requirements of this chapter and rules adopted in accordance with chapter 91, including any rules or requirements that protect the safety of the contestants to the extent feasible."

SECTION 59. Section 440E-16, Hawaii Revised Statutes, is amended to read as follows:

**"[H§440E-16] Physician[s] or osteopathic physician; duties.** Every promoter holding a license to conduct, hold, or give mixed martial arts contests shall have in attendance at every contest at least two physicians licensed to practice medicine or osteopathic medicine in the State under chapter 453 ~~[or 460]~~, who shall observe the physical condition of the mixed martial arts contestants and advise the referee with regard thereto and, one hour before each contestant enters the ring, certify in writing as to the physical condition of the contestant to engage in the contest. A report of the medical examination shall be filed with the director not later than forty-eight hours after the conclusion of the contest. If a contestant is knocked down or severely injured during a contest, or for any other ~~[reason]~~ as provided in rules adopted by the director pursuant to chapter 91, at least one physician shall immediately examine the contestant and file a written medical opinion with the director within forty-eight hours of the contest."

SECTION 60. Section 451D-2, Hawaii Revised Statutes, is amended by amending the definitions of "board" and "health care professional" to read as follows:

"**"Board"** means the board of dental examiners, the Hawaii medical board, the board of psychology, the board of nursing, ~~[the board of osteopathic examiners]~~ the board of veterinary examiners, the board of acupuncture, the board of massage therapy, the board of examiners in naturopathy, the board of chiropractic examiners, and the board of pharmacy.

"**"Health care professional"** includes physicians and surgeons and others licensed pursuant to ~~[chapters]~~ chapter 453 ~~[and 460]~~, podiatrists licensed pursuant to chapter 463E, dentists licensed pursuant to chapter 448, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, veterinarians licensed pursuant to chapter 471, acupuncturists licensed pursuant to chapter 436E, massage therapists licensed pursuant to chapter 452, naturopathic physicians licensed pursuant to chapter 455, chiropractors licensed pursuant to chapter 442, and pharmacists licensed pursuant to chapter 461."

SECTION 61. Section 457-2, Hawaii Revised Statutes, is amended by amending the definitions of "the practice of nursing as a licensed practical nurse" and "the practice of nursing as a registered nurse" to read as follows:

"**"The practice of nursing as a licensed practical nurse"** means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, implementation of basic nursing procedures in the plan of care; or observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life

and health and functioning as a part of the health care team, under the direction of a dentist, medical doctor[;] or osteopath, registered nurse, ~~[osteopath;]~~ or podiatrist licensed in accordance with chapter 448, 453, 457, ~~[460;]~~ or 463E; or administration of treatment and medication as prescribed; or promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

“The practice of nursing as a registered nurse” means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; or administration, supervision, coordination, delegation, and evaluation of nursing practice; or provisions of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or utilization of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, medical doctor[;] or osteopath, or podiatrist licensed in accordance with chapter 448, 453, ~~[460;]~~ or 463E or the orders of an advanced practice registered nurse recognized in accordance with this chapter.”

SECTION 62. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of “licensed physician” to read as follows:

““Licensed physician” means a physician or osteopathic physician licensed by the Hawaii medical board pursuant to chapter 453 ~~[or 460]~~.”

SECTION 63. Section 461-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Beginning with the renewal for the licensing biennium commencing on January 1, 2008, and every biennial renewal thereafter, each licensee shall have completed thirty credit hours in continuing education courses within the two-year period preceding the renewal date, regardless of the licensee’s initial date of licensure; provided that a licensee who has graduated from an accredited pharmacy school within one year of the licensee’s first license renewal period shall not be subject to the continuing education requirement for the first license renewal. The board may extend the deadline for compliance with the continuing education requirement based on any of the following:

- (1) Illness, as certified by a physician or osteopathic physician licensed under chapter 453 ~~[or 460;]~~ or licensed in the jurisdiction in which the licensee was treated;
- (2) Military service under extended active duty with the armed forces of the United States;
- (3) Lack of access to continuing education courses due to the practice of pharmacy in geographically isolated areas; and
- (4) Inability to undertake continuing education due to incapacity, undue hardship, or other extenuating circumstances.”

SECTION 64. Section 461J-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of commerce and consumer affairs for administrative purposes the board of physical therapy. The



board shall consist of seven members. Four members shall be physical therapists, one member shall be a physician, osteopathic physician, or surgeon with a permanent license under chapter 453 [~~or 460~~], or a dentist with a permanent license under chapter 448, and two members shall be consumers. All members shall be at least eighteen years of age and residents of the State."

SECTION 65. Section 466J-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board shall consist of ten members. The membership shall be composed of:

- (1) Two persons licensed to practice medicine or osteopathic medicine pursuant to chapter 453 [~~or 460~~] and certified by the American Board of Radiology;
- (2) Four persons, each with at least five years' experience and certified in the practice of radiography, two of whom shall be persons engaged in the hospital practice of radiography;
- (3) One person with at least five years' experience who is certified and engaged in the practice of radiation therapy technology;
- (4) One person with at least five years' experience, who is certified and engaged in the practice of nuclear medicine technology;
- (5) One person from the general public; and
- (6) The director or the director's designated representative shall be the tenth, ex officio voting member of the board."

SECTION 66. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of "licensed physician" to read as follows:

"“Licensed physician” means any person who is licensed to practice medicine or osteopathic medicine in Hawaii under chapter 453 [~~or 460~~].”

SECTION 67. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

“§671-1 Definitions. As used in this chapter:

- [(+)] “Health care provider” means a physician, osteopathic physician, or surgeon licensed under chapter 453, [~~a physician and surgeon licensed under chapter 460;~~] a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.
- [(2)] “Medical tort” means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient.”

SECTION 68. Section 671-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The insurance commissioner shall forward the name of every health care provider, except a hospital and physician or an osteopathic physician or surgeon licensed under chapter 453 [~~or an osteopathic physician or surgeon licensed under chapter 460~~] or a podiatrist licensed under chapter 463E, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review

of the fitness of the health care provider to practice the health care provider's profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician or osteopathic physician or surgeon licensed under chapter 453 ~~[or an osteopathic physician and surgeon licensed under chapter 460]~~ or a podiatrist licensed under chapter 463E.

(c) A failure on the part of any self-insured health care provider to report as requested by this section shall be grounds for disciplinary action by the Hawaii medical board ~~[, board of osteopathic examiners,]~~ or the state health planning agency, as applicable. A violation by an insurer shall be grounds for suspension of its certificate of authority."

SECTION 69. Section 671-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician, osteopathic physician, or surgeon licensed to practice under chapter 453 ~~[or chapter 460]~~. The chairperson shall be appointed by the director of the department of commerce and consumer affairs from a list of eligible persons approved by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician, osteopathic physician, or surgeon shall be appointed by the chairperson and shall be currently licensed and in good standing under chapter 453 ~~[or under chapter 460]~~."

2. By amending subsection (g) to read:

"(g) The Hawaii medical board ~~[and board of osteopathic examiners]~~ shall ~~[each]~~ prepare a list of physicians, osteopathic physicians, surgeons, and podiatrists, as the case may be, along with their respective specialties. These physicians, osteopathic physicians, and surgeons shall be eligible to serve as consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists."

SECTION 70. Section 671-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for such carrier, ~~[and the board of osteopathic examiners,]~~ as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician, osteopathic physician, or surgeon licensed under chapter 453 ~~[or an osteopathic physician and surgeon licensed under chapter 460]~~ or a podiatrist licensed under chapter 463E. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: "We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant"; or "We find

the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider”.

SECTION 71. Section 671D-4, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual licensed under chapter 453 ~~[or 460, or both,]~~ or section 463E-1, to practice medicine or surgery or osteopathy or podiatric medicine; an individual licensed under chapter 448 to practice dentistry or dental surgery; or any individual who, without authority, holds oneself out to be so authorized.”

SECTION 72. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the first degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
- (b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;
- (c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:
  - (i) The person is not less than five years older than the minor; and
  - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual penetration another person who is mentally defective; or
- (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person’s consent.

Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453~~;~~ or 455~~[-or 460;]~~ from performing any act within their respective practices.”

SECTION 73. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the second degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or
- (c) The person, while employed:
  - (i) In a state correctional facility;
  - (ii) By a private company providing services at a correctional facility;
  - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
  - (iv) By a private correctional facility operating in the State of Hawaii; or
  - (v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453[,] or 455[, ~~or~~ 460,] from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.”

SECTION 74. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
  - (i) The person is not less than five years older than the minor; and
  - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
- (e) The person, while employed:
  - (i) In a state correctional facility;
  - (ii) By a private company providing services at a correctional facility;
  - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
  - (iv) By a private correctional facility operating in the State of Hawaii; or
  - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or
- (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453[,] or 455[, ~~or~~ 460,] from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.”

PART III

SECTION 75. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 76. This Act shall take effect upon approval, provided that:

- (1) Section 23 shall take effect retroactive to June 29, 2008;
- (2) Part II shall take effect retroactive to April 3, 2008; provided that sections 58 and 59, amending sections 440E-5 and 440E-16, Hawaii Revised Statutes, shall take effect on July 1, 2009; and
- (3) Section 62, amending section 461-1, Hawaii Revised Statutes, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.

(Approved April 21, 2009.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 12

S.B. NO. 1113

A Bill for an Act Relating to Geographic Limitations on Time Shares.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514E-5, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-5 Geographic limitations.** Except as provided in this section, time share units, time share plans, and transient vacation rentals are prohibited.

- (1) Existing time share units, time share plans, and transient vacation rentals are not impaired by the provisions of this section.
- (2) Time share units, time share plans, and transient vacation rentals are allowed:
  - (A) In areas designated for hotel use, resort use, or transient vacation rentals, pursuant to county authority under section 46-4, or where the county, by its legislative process, designates hotel, transient vacation rental, or resort use;
  - (B) In a hotel where the county explicitly approves such use, in advance, as a nonconforming use; or
  - (C) In a county with a population in excess of five hundred thousand, in an existing hotel which is a valid nonconforming use under county ordinance~~]; provided that the property shall have at least sixty units and at least forty per cent of the units, upon completion of sales of the time share intervals in the project, shall be made available for sale as residential apartments or rented as residential apartments].”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 21, 2009.)

## A Bill for an Act Relating to Community Care Foster Family Home.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Community care foster family homes were originally created, and more recently expanded, to serve medicaid clients who, due to a lack of financial resources, have limited options for long-term care. In 2006, Act 270, codified in section 346-331, Hawaii Revised Statutes, granted the department of human services the discretion to expand the maximum allowable capacity of community care foster family homes from two to three beds, provided that two of those beds are occupied by medicaid clients. This was done to help preserve adequate space in long-term care facilities for those with limited options.

Since September 2005, five hundred new community care foster family homes have opened and new homes continue to be opened. However, there is also an increasing need for community care foster family homes as Hawaii continues to have an aging population which is expanding faster than national rates. It is clear that a large portion of this population will be medicaid eligible meaning that there will be a larger population sharing fewer resources.

While this presents very real logistical difficulties, there is also a recognized need to accommodate private-pay individuals who share a long-term relationship. As the cost of medical care continues to rise, it is becoming apparent that even those who do not rely on medicaid for their long-term care cannot afford the cost of private care, leaving this population, also, with limited options.

The purpose of this Act, therefore, is to effectuate a balance among the varied needs of Hawaii's aged population by allowing the department of human services to establish a temporary demonstration project that permits two private-pay individuals to be cared for in the same community care foster family home, provided they meet certain qualifying conditions. The demonstration project will be monitored and evaluated by the department of human services on its effects on space availability for medicaid clients in the community care foster family homes.

SECTION 2. Notwithstanding the definition of "community care foster family home" under section 346-331, Hawaii Revised Statutes, the department of human services may establish and implement a two-year demonstration project to allow two private-pay individuals to be cared for in the same community care foster family home; provided that all of the following conditions are met:

- (1) The community care foster family home is certified for three beds;
- (2) Operators of three-bed community care foster family homes immediately notify the department of human services or its designee of any vacancy in writing;
- (3) The community care foster family home has had a vacancy in the third bed for at least six consecutive months; provided further that the department of human services may waive this requirement if, during the six preceding months, there has been a minimum of three vacant beds available for medicaid clients at other community care foster family homes within a thirty-minute drive on the island of Oahu or a sixty-minute drive on the neighbor islands;
- (4) The two, private-pay clients are in a relationship with each other as:
  - (A) A married couple;
  - (B) Reciprocal beneficiaries;
  - (C) Siblings;

- (D) A parent and a child; or
- (E) Best friends;
- (5) One member of the private-pay couple has been in residence at the community care foster family home for at least the five preceding consecutive years; and
- (6) There is certified medical documentation that the member of the private-pay couple who has been residing in the community care foster family home has a medical condition that prevents the individual from being moved from the community care foster family home.

SECTION 3. The department of human services shall:

- (1) Monitor and evaluate the demonstration project for its impact on the availability of space for medicaid clients during this two-year demonstration project; and
- (2) Submit to the legislature a report of its findings and recommendations no later than twenty days prior to the convening of the regular session of 2011.

SECTION 4. It is the intent of this Act not to jeopardize the receipt of any federal aid. If this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, this Act shall be deemed void.

SECTION 5. Any person under the demonstration project shall be allowed to remain in the community care foster family home in which they reside upon the repeal of this Act.

SECTION 6. This Act shall take effect upon its approval, and shall be repealed two years from its effective date.

(Approved April 22, 2009.)

## ACT 14

H.B. NO. 274

A Bill for an Act Relating to Patriot Day.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that on September 11, 2001, more than three thousand people lost their lives after hijacked airplanes crashed into the World Trade Center in New York, the Pentagon in Virginia, and in rural Pennsylvania. The legislature further finds that during the aftermath of these attacks, true heroism was defined by the brave acts of police officers, firefighters, emergency personnel, and ordinary citizens. The purpose of this measure is to honor those who lost their lives on September 11, 2001, and to acknowledge the bravery of those who assisted in rescue efforts following the attacks.

SECTION 2. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§8- Patriot Day.** September eleventh shall be known and designated as “Patriot Day”. This day shall not be construed to be a state holiday.”

## ACT 15

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 15

H.B. NO. 135

A Bill for an Act Relating to the State Insect.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§5- State insect.** The pulelehua (Vanessa tameamea), also known as the Kamehameha butterfly, is established and designated as the official insect of the State.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 16

S.B. NO. 1055

A Bill for an Act Relating to Harbors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 266-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may also adopt, amend, and repeal such rules as are necessary:

- (1) For the proper regulation and control of all shipping, traffic, and other related activities in the commercial harbors belonging to or controlled by the State~~[-and];~~ of the entry, departure, mooring, and berthing of vessels therein~~[-];~~ and ~~[for the regulation and control]~~ of all other matters and things connected with such ~~[shipping;]~~ activities;
- (2) To establish safety measures and security requirements in or about the commercial harbors, land, and facilities belonging to or controlled by the State;



- [2)] (3) To prevent the discharge or throwing into commercial harbors of rubbish, refuse, garbage, or other substances likely to affect water quality or that contribute to making such harbors unsightly, unhealthful, or unclear, or that are liable to fill up shoal or shallow waters in, near, or affecting the commercial harbors; and
- [(3)] (4) To prevent the escape of fuel or other oils or substances into the waters in, near, or affecting commercial harbors from any source point, including, but not limited to, any vessel or pipes or storage tanks upon the land.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2009.)

## ACT 17

H.B. NO. 1537

A Bill for an Act Relating to Automated External Defibrillators.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 663-1.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any person who in good faith, without remuneration or expectation of remuneration, attempts to resuscitate a person in immediate danger of loss of life when administering any automated external defibrillator, regardless of where the automated external defibrillator that is used is located, shall not be liable for any civil damages resulting from any act or omission except as may result from the person’s gross negligence or wanton acts or omissions.

Any person, including an employer, who provides for an automated external defibrillator or an automated external defibrillator training program shall not be vicariously liable for any civil damages resulting from any act or omission of the persons or employees who, in good faith and without remuneration or the expectation of remuneration, attempt to resuscitate a person in immediate danger of loss of life by administering an automated external defibrillator, except as may result from a person’s or employer’s gross negligence or wanton acts or omissions.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2009.)

## ACT 18

H.B. NO. 1186

A Bill for an Act Relating to Housing Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 206E-4, Hawaii Revised Statutes, is amended to read as follows:

**“§206E-4 Powers; generally.** Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;
- (7) Prepare or cause to be prepared a community development plan for all designated community development districts;
- (8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
- (12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;
- (13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, ~~in order~~ to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

- (15) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (16) Contract for and accept gifts or grants in any form from any public agency or from any other source;
- (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; and
- (18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction~~[-Such];~~ provided that the authority shall not permit any person to make cash payments in lieu of providing reserved housing, except to account for any fractional unit that results after calculating the percentage requirement against residential floor space or total number of units developed. The substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:
  - (A) Within the community development district;
  - (B) Within areas immediately surrounding the community development district;
  - (C) Areas within the central urban core;
  - (D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not limited to, the establishment of guidelines to ensure compliance with the above priorities.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on April 23, 2009, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 19

S.B. NO. 856

A Bill for an Act Relating to Identification.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 846-30.5, Hawaii Revised Statutes, is amended to read as follows:

**“§846-30.5 Expiration date.** Every certificate of identification issued under this part, whether an original or a renewal, shall bear an expiration date ~~[which] that~~ shall be on the person's birthday~~[-]~~ six years after the year of issuance~~[-; provided]~~, except that every certificate issued on or after July 1, 2009, shall

bear an expiration date that shall be on the person's birthday eight years after the date of issuance and except further that if the person is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the person's Immigration and Naturalization Service departure card (I-94). [All certificates of identification issued without expiration dates shall expire on December 31, 1999. To provide for the transition to expiration dates that are birthdays of the persons issued certificates, any certificate issued to a person with an expiration date other than the birthday of that person in the year of expiration shall expire on that person's last birthday immediately preceding the certificate's stated expiration date.]"

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved April 27, 2009.)

## ACT 20

S.B. NO. 1676

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Since 1999, the legislature has supported the use and expansion of telehealth services and technology in Hawaii. In the past, telehealth services were primarily facility-based without a consumer driven component. With internet-based technology revolutionizing the way consumers acquire goods and services today, it is now possible to apply this technology to health care. Hawaii is poised to become the first state in the nation to provide statewide consumer access to local physicians via the Internet and telephone. Individuals will be able to interact with local physicians in a real time, secure, and private online environment.

Supporting this expanded use of technology for telemedicine services will increase access to health care in rural areas of the State. People living in Hawaii's rural areas often find it more difficult to access specialty physician care. The use of new and improved technologies to deliver effective and prompt health care will allow residents to promptly consult with a specialist.

Difficulty or inability to visit a specialist often forces individuals to delay appropriate health care. These delays may ultimately lead to worsened health outcomes which could have been avoided. New technology will provide additional options to access care through discussion with a local physician live via the Internet or telephone twenty-four hours a day, seven days a week.

Expansion of telemedicine services may also assist in containing rising health care costs. The availability of immediate access to physicians may prevent inappropriate and expensive trips to the emergency room. Those without health care coverage who currently access non-emergent care in the emergency room would be able to visit a physician online. As consumers become more comfortable receiving care through telemedicine, hospitals could see a decrease not only in inappropriate emergency room usage, but also a decrease in uncompensated care.

In addition, since rural areas locally and across the nation find it increasingly difficult to attract and retain physicians, particularly specialists, expansion of telemedicine services may attract physicians to practice in these areas. Tele-

medicine will provide physicians with greater flexibility and freedom within their practices wherever they are physically located in Hawaii. The resulting lifestyle improvement without sacrifice of income may prove to be an attractive incentive for physicians to practice in rural areas.

Despite the legislature's clear and consistent support of expanded use of telemedicine to improve access to health care services throughout the State, questions have recently been raised by the Hawaii medical board about the appropriate use of this technology to establish the physician-patient relationship. Therefore, the purpose of this Act is to reinforce the legislature's support of online care services through telemedicine by:

- (1) Clarifying that telemedicine is within a physician's scope of practice and is authorized in Hawaii when practiced by a licensed physician providing services to patients; and
- (2) Further clarifying the current laws regarding telehealth to ensure compliance with changes made to the law regulating the practice of medicine.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§453- Practice of telemedicine.** (a) Nothing in this section shall preclude any physician acting within the scope of the physician's license to practice from practicing telemedicine as defined in this section.

(b) For the purposes of this section, "telemedicine" means the use of telecommunications services, including real-time video or web conferencing communication or secure web-based communication to establish a physician-patient relationship, to evaluate a patient, or to treat a patient. "Telehealth" as used in chapters 431, 432, and 432D, includes "telemedicine" as defined in this section.

(c) Telemedicine services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contra-indications to the treatment recommended or provided.

(d) Treatment recommendations made via telemedicine, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face to face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing a controlled substance, a physician-patient relationship shall be established pursuant to chapter 329.

(e) All medical reports resulting from telemedicine services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal requirements including privacy requirements.

(f) A physician shall not use telemedicine to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telemedicine for any purpose, including consultation with a medical provider licensed in another state, authorized by this section, or as otherwise provided by law."

SECTION 3. Section 431:10A-116.3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto. [In] in the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 4. Section 432:1-601.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto. [In] in the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 5. Section 432D-23.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto. [In] in the event that a health care provider-patient relationship does not exist between the patient and the health care provider involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Became law on April 28, 2009, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 21

H.B. NO. 293

A Bill for an Act Relating To Protective Proceedings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:5-401, Hawaii Revised Statutes, is amended to read as follows:

“**§560:5-401 Protective proceeding.** Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

- (1) A minor, if the court determines that:
  - (A) The minor owns money or property requiring management or protection that cannot otherwise be provided;
  - (B) The minor has, or may have, business affairs that may be put at risk or prevented because of the minor’s age; or
  - (C) Money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

- (2) Any individual, including a minor, if the court determines that, for reasons other than age:
  - (A) By clear and convincing evidence, the individual is unable to manage property and business affairs effectively because of an impairment in the ability to receive and evaluate information or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance[;] or because of another physical, mental, or health impairment, or because the individual is missing, detained, or unable to return to the United States; and
  - (B) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money."

SECTION 2. Section 560:5-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The petition under subsection (a) shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;
- (2) If the petition alleges impairment in the respondent's ability to receive and evaluate information[;] or alleges another physical, mental, or health impairment, a brief description of the nature and extent of the respondent's alleged impairment;
- (3) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;
- (4) The name and address of the respondent's:
  - (A) Spouse or reciprocal beneficiary or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
  - (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;
- (5) The name and address of the person responsible for care or custody of the respondent;
- (6) The name and address of any legal representative of the respondent;
- (7) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;
- (8) The reason why a conservatorship or other protective order is in the best interest of the respondent; and
- (9) A proposed itemized budget of income and expenditures."

## ACT 22

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)

## ACT 22

H.B. NO. 294

A Bill for an Act Relating to Personal Liability of Trustee to Third Parties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:7-306, Hawaii Revised Statutes, is amended to read as follows:

**“§560:7-306 Personal liability of trustee to third parties.** (a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts entered into in the trustee’s fiduciary capacity in the course of administration of the trust estate[-], unless the trustee fails to disclose the trustee’s representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate [and] or for torts committed in the course of administration of the trust estate[-] only if the trustee is personally at fault.

(c) Claims based on contracts entered into by a trustee in the trustee’s fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) Any judgment obtained against the trustee in the trustee’s fiduciary capacity may be collected against the trust estate. The question of liability as between the trust estate and the trustee [personally] individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)



## ACT 23

S.B. NO. 886

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 414-402, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

SECTION 2. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[involuntarily]~~ administratively dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 3. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.”

SECTION 4. Section 414D-15, Hawaii Revised Statutes, is amended to read as follows:

**“§414D-15 Notice.** (a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by<sup>1</sup> newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, shall be effective when mailed, if mailed postpaid and correctly addressed to the member’s address shown in the corporation’s current record of members.

(e) Except as provided in subsection (d), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with first class postage affixed; or

- (3) On the date shown on the return receipt; if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's last known address shown in the corporation's current list of members.

(g) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's last known address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of the members, at the last known address appearing on the current list of members.

(h) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in the State), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(i) Without limiting the manner by which notice otherwise may be given to members, notice to members given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the member to whom the notice is given. Any consent shall be revocable by the member by written notice to the corporation. Any consent shall be deemed revoked if:

- (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
  - (2) The inability to deliver becomes known to the secretary or an assistant secretary of the corporation, to the transfer agent, or other person responsible for giving notice; provided that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.
- (j) Notice given pursuant to subsection (i) shall be deemed given:
- (1) If by facsimile telecommunication, when directed to a number at which the member has consented to receive notice;
  - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
  - (3) If by posting on an electronic network together with separate notice to the member of such specific posting, upon the later of the posting and the giving of such separate notice; and
  - (4) If by any other form of electronic transmission, when directed to the member.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

[~~(h)~~] (k) If section 414D-105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern."

SECTION 5. Section 414D-249, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation ~~[may continue]~~ continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its business and affairs under section 414D-245 and notify claimants under sections 414D-246 and 414D-247.”

SECTION 6. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[involuntarily]~~ administratively dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 7. Section 415A-16.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, ~~[foreign corporation,]~~ general partnership, limited partnership, or domestic limited liability company, shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 8. Section 415A-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) A professional corporation that is administratively dissolved ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

2. By amending subsection (f) to read:

“(f) If a professional corporation’s period of duration specified in its articles of incorporation has expired, the professional corporation ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

SECTION 9. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

“**§425-14 Cancellation of registration.** (a) The director may commence a proceeding to cancel the registration of a domestic or foreign general partnership if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(b) Within two years after the administrative cancellation of a domestic general partnership under this section, the registration statement of the domestic general partnership may be reinstated by the director upon written application executed by any partner of the domestic general partnership. The application shall:

- (1) Recite the name of the domestic general partnership and the effective date of its administrative cancellation;
- (2) Contain all statements due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the domestic general partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(c) Within the applicable reinstatement period, should the name of the domestic general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[involuntarily]~~ administratively canceled domestic general partnership pursuant to the amendment provisions of this chapter.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the ~~[involuntary]~~ administrative cancellation and the domestic general partnership may resume its business as if the ~~[involuntary]~~ administrative cancellation had never occurred."

SECTION 10. Section 425-164, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) A partnership whose statement of qualification ~~[or statement of foreign qualification]~~ has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(d) A reinstatement under subsection (c) shall relate back to and take effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership ~~[or foreign limited liability partnership]~~ shall continue upon reinstatement as if the revocation had never occurred."

SECTION 11. Section 425-193, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The converted entity, if a domestic corporation, domestic professional corporation, ~~[foreign corporation]~~ domestic nonprofit corporation,

general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 12. Section 425E-1103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The converted entity, if a domestic corporation, domestic professional corporation, ~~[foreign corporation,]~~ domestic nonprofit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents to the articles of conversion.”

SECTION 13. Section 428-902.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, ~~[foreign corporation,]~~ domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)

**Note**

1. Prior to amendment “a” appeared here.

**ACT 24**

S.B. NO. 438

A Bill for an Act Relating to Board of Education Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes that it is in the public interest to expand public access to governmental processes. At the same time, governmental agencies must be able to reasonably carry out their business and responsibilities in serving the public.

In fulfilling their responsibilities as elected officials, board of education members must adhere to the requirements of chapter 92, Hawaii Revised Statutes, the sunshine law. However, board of education members, who are not salaried and are not on full-time or part-time status, are confined by the stringent six-day public notice requirements.

In their “volunteer capacity”, board of education members find it difficult to meet the deadline-driven demands of the legislative session, which often necessitate that the board of education be able to take positions or other action on legislation and legislation-related matters in a timely manner. It therefore becomes necessary to provide flexibility in the public notice requirements of chapter 92, Hawaii Revised Statutes, to enable board of education members to participate effectively in the legislative process and adhere to the deadlines of the legislative session.

## ACT 25

The purpose of this Act is to authorize the board of education to file any notice that specifies legislation or legislation-related agenda items no fewer than two calendar days before a meeting during the period from the convening of the legislature in regular session to adjournment sine die of each regular session, and during any special session of the legislature.

SECTION 2. Section 302A-1106, Hawaii Revised Statutes, is amended to read as follows:

**“[§302A-1106] Organization; quorum; meetings.** (a) The board shall elect from its own membership a chairperson and a vice-chairperson. A majority of all members to which the board is entitled shall constitute a quorum to do business and the concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall have been given to all members of the board or a bona fide attempt shall have been made to give due notice to all members of the board to whom it was reasonably practicable to give due notice. Meetings shall be called and held, at the call of the chairperson or by a quorum, as often as may be necessary for the transaction of the department's business.

**(b) Chapter 92 notwithstanding, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer than two calendar days before the meeting.”**

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Became law on April 29, 2009, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 25

S.B. NO. 880

A Bill for an Act Relating to Gas Pipeline Systems.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 269, part IV, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 26

S.B. NO. 160

A Bill for an Act Relating to School Meals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The intent of this Act is to modify the manner in which school meal prices, including lunch and breakfast, are determined. With the ris-

ing costs of food, fuel, and labor, the department of education requires a better method of determining the price of school meals. Currently, the cost of school lunch is limited to one-half of the cost of preparing the lunch. This Act provides the department of education with greater fiscal flexibility in the preparation of meals by requiring the department of set meal prices at not less than one-half of the cost of preparing meals. The Act also defines "school meals".

SECTION 2. Section 302A-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"School meals" means breakfast and lunch prepared and served by a school cafeteria.

SECTION 3. Section 302A-404, Hawaii Revised Statutes, is amended to read as follows:

~~["§302A-404"]~~ School lunches meals. School ~~lunches~~ meals shall be made available under the school ~~lunch~~ meals program in every school where the students are required to eat ~~lunch~~ meals at school."

SECTION 4. Section 302A-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The price for [the] school [lunch] meals shall be set by the department to ensure that moneys received from the sale of the [lunches may] meals shall be not less than [up to] one-half of the cost of preparing the [school lunch] meals. The [price] prices for [the] school [lunch shall] meals may be adjusted annually based on the [average cost of preparing the school lunch over the three years preceding any increase;] previous year's costs rounded to the nearest five cents; provided that the department by rule shall provide a lower rate or free [lunches] meals to children based on their economic need."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved April 30, 2009.)

ACT 27

S.B. NO. 715

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 279A-2, Hawaii Revised Statutes, is amended to read as follows:

~~["§279A-2 Statewide transportation plan.[]"]~~ (a) The state department of transportation shall prepare a new statewide transportation plan and shall submit said plan to the legislature in its 1978 session. The legislature shall adopt the plan by resolution. The plan shall be directed toward the ultimate development of a balanced, multi-modal statewide transportation system that serves clearly identified social, economic, and environmental objectives. The statewide transportation plan shall include[; but not be limited to;] the following system components:

- (1) ~~[the]~~ The national system of interstate and defense highways, and highways within the state highway system;
- (2) ~~[airports;]~~ Airports;
- (3) ~~[harbors]~~ Harbors and water-borne transit;
- (4) ~~[surface]~~ Surface mass transit systems; and
- (5) ~~[major]~~ Major county roads.

The department of transportation shall pay particular attention to the interfacing of the various modes of transportation.

(b) The statewide transportation plan shall ~~[include];~~

- (1) Include projected transportation needs for a six-year period and a schedule of priorities for the construction, modification, and maintenance of various segments of the statewide plan ~~[which]~~ that involve either ~~[state-operated]~~ state-operated systems or ~~[county-operated]~~ county-operated systems ~~[which]~~ that may require state financial assistance for a twenty-year period~~[-];~~ and
- (2) Comply with county transportation-related plans; county general plans; and all community, development, or community development plans adopted pursuant to the county general plan, to the extent that compliance does not affect the receipt of federal funds.

(c) Both the six-year and twenty-year estimates shall be updated annually.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 28

S.B. NO. 39

A Bill for an Act Relating to Reports on the Hawaii Cancer Research Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304A-2168, Hawaii Revised Statutes, is amended to read as follows:

**“§304A-2168 Hawaii cancer research special fund.** (a) There is established within the state treasury a special fund to be known as the Hawaii cancer research special fund to be administered and expended by the University of Hawaii.

(b) The moneys in the special fund shall be used by the University of Hawaii for the cancer research center of Hawaii’s research and operating expenses and capital expenditures.

(c) The following shall be deposited into the special fund:

- (1) Moneys collected pursuant to section 245-15;
- (2) All other fees, charges, and other moneys received in conjunction with programs of the cancer research center of Hawaii;
- (3) Transfers from other accounts or funds; and
- (4) Interest earned or accrued on moneys in the special fund.

(d) Beginning on January 1, 2010, the University of Hawaii shall report semi-annually to the legislature on the moneys in the Hawaii cancer research



special fund, including deposits, expenditures, and other transactions. The reports shall explain in detail all expenditures from the special fund."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 29

S.B. NO. 878

A Bill for an Act Relating to Publication of Hearing Notices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The State is continuously examining ways to develop more efficient and cost-effective means of operation. Developing a more streamlined, consistent, and cost-effective means of providing notice of public hearings is one way to promote efficient and cost-effective operations.

The legislature finds that one particular area in which public notice may be exceeding that which is necessary to accomplish its specific objectives is where state law calls for the publication of notice statewide, but where the affected public resides on only one or more islands and not statewide. Where applicable, by limiting the publication of hearing notices to only those persons residing in the affected geographic areas, costs of publication will be reduced dramatically, while still ensuring that notices are directed to persons affected by the proposed activity. For example, if the proposed limitation on the scope of publication of notice had been incorporated into state law during fiscal year 2006-2007, the public utilities commission would have saved approximately \$74,000, or forty-five per cent, of its advertising expenditures.

The purpose of this Act is to clarify the type of notice required for public hearings held by the public utilities commission in its regulation of utility rates and ratemaking procedures.

SECTION 2. Section 269-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any public hearing held pursuant to section ~~[269-16(e);]~~ 269-16(b), shall be a noticed public hearing or hearings on the island or islands on which the utility ~~[is situated-]~~ provides utility services. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks ~~[statewide;]~~ in the county or counties in which the utility provides utility service, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing. The applicant or applicants shall notify their consumers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner and the fact of notification to be reported to the commission before the date of hearing."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

A Bill for an Act Relating to Tobacco.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to continue the requirement that businesses engaged in the sale of cigarettes and other tobacco products at the retail level acquire a retail tobacco permit from the department of taxation to engage in such activity. Act 131, Session Laws of Hawaii 2005, which enacted the requirement of a retail tobacco permit, contains a sunset clause that will repeal Act 131 on July 1, 2009.

The legislature finds that the retail tobacco permit program has facilitated the enforcement of chapter 245, Hawaii Revised Statutes, and has resulted in an increase in taxes collected. Consequently, this Act removes the sunset clause and keeps in place the requirement that an entity engaged in the retail sale of cigarettes or other tobacco products obtain a retail tobacco permit.

SECTION 2. Act 131, Session Laws of Hawaii 2005, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect upon its approval; provided that[:

- (1) ~~Sections~~ sections 4 and 5 of this Act shall take effect on July 1, 2006[; and
- (2) ~~This Act shall be repealed on July 1, 2009; provided that sections 245-1 and 245-2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act].”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2009.

(Approved April 30, 2009.)

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to repeal the district business and fiscal officer positions within the department of education. In lieu of these positions, the legislature has provided for one business manager position for each of the fifteen complex areas to support the schools and officers within each complex.

SECTION 2. Section 302A-604.5, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 32

S.B. NO. 947

A Bill for an Act Relating to Unemployment Contribution Rates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-66, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any other provision of this chapter, the following shall apply regarding assignment of rates and transfers of experience:

- (1) If an employing unit transfers its organization, trade, or business, or a portion thereof, to another employing unit and, at the time of the transfer, there is substantially common ownership, management, or control of the two employing units, both employing units shall file a notification of the transfer with the department on a form approved by the department within thirty days after the date of the transfer. The department shall transfer the experience records attributable to the transferred organization, trade, or business to the employing unit to whom the organization, trade, or business is transferred. The rates of both employing units shall be recalculated and made effective beginning with the calendar ~~quarter~~ year immediately following the date of the transfer of the organization, trade, or business;
- (2) If a person is not an employing unit as defined in section 383-1 at the time it acquires the organization, trade, or business of another employing unit, both the person and the employing unit shall file a notification of the acquisition with the department on a form approved by the department within thirty days after the date of the acquisition. If the department determines at the time of the acquisition or thereafter, based on objective factors that may include:
  - (A) The cost of acquiring the organization, trade, or business;
  - (B) Whether the person continued the activity of the acquired organization, trade, or business;
  - (C) How long the organization, trade, or business was continued; or
  - (D) Whether a substantial number of new employees were hired for performance of duties unrelated to the organization, trade, or business activity conducted prior to the acquisition, that the acquisition was solely or primarily for the purpose of obtaining a lower rate of contribution, the person shall not be assigned the lower rate and shall be assigned the contribution rate for a new or newly covered employer pursuant to subsection (a)(2) instead;
- (3) An employing unit or person who is not an employing unit shall be subject to penalties under paragraph (4) or (5) if the employing unit or person who is not an employing unit:
  - (A) Knowingly violates or attempts to violate this subsection or any other provision of this chapter related to determining the assignment of a contribution rate;

- (B) Makes any false statement or representation or fails to disclose a material fact to the department in connection with the transfer or acquisition of an organization, trade, or business; or
- (C) Knowingly advises another employing unit or person in a way that results in a violation or attempted violation of this subsection;
- (4) If the person is an employing unit:
  - (A) The employing unit shall be subject to the highest rate assignable under this chapter for the calendar year during which the violation or attempted violation occurred and for the consecutive three calendar years immediately following; or
  - (B) If the employing unit is already at the highest rate or if the amount of increase in the employing unit's rate would be less than two per cent for the calendar year during which the violation or attempted violation occurred, a penalty equal to contributions of two per cent of taxable wages shall be imposed for the calendar year during which the violation or attempted violation occurred and the consecutive three calendar years immediately following. Any penalty amount collected in excess of the maximum contributions payable at the highest rate shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;
- (5) If the person is not an employing unit, the person shall be subject to a penalty of not more than \$5,000. The penalty shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;
- (6) For purposes of this subsection, the following definitions shall apply:
  - (A) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the requirements or prohibition involved;
  - (B) "Violates or attempts to violate" includes<sup>1</sup> but is not limited to<sup>1</sup> intent to evade, misrepresentation, or wilful nondisclosure;
  - (C) "Person" shall have the same meaning as defined in section [6601(a)(1)] 7701(a)(1) of the Internal Revenue Code of 1986, as amended; and
  - (D) "Organization, trade, or business" shall include the employer's workforce;
- (7) In addition to the civil penalties imposed by paragraphs (4) and (5), any violation of this section may be prosecuted under sections 383-142 and 383-143. No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this section;
- (8) The department shall establish procedures to identify the transfer or acquisition of an employing unit for the purposes of this section; and
- (9) This section shall be interpreted and applied in a manner to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall take effect retroactive to June 9, 2005.

(Approved April 30, 2009.)

Note

1. Prior to amendment a comma appeared here.

ACT 33

S.B. NO. 162

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of education continuously reviews the implementation and effectiveness of the performance standards to determine whether or not the standards should be modified. As a result, there is no longer any need for the performance standards review commission.

The purpose of this Act is to repeal the performance standards review commission.

SECTION 2. Section 302A-201, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-201 Statewide performance standards.** (a) The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board.

~~[(b) The board shall appoint a performance standards review commission, to be convened at the beginning of the 1997-1998 school year, and every four years thereafter, to assess the effectiveness of the performance standards. The commission shall include representatives of the Hawaii State Parent, Teacher, Student Association; the Hawaii State Student Council; the superintendent; the dean of the college of education of the University of Hawaii; and the professional education community. The commission may request the assistance of such department or school staff as may be necessary to facilitate its review.~~

~~(c) The commission shall review the implementation of the performance standards by the board and the schools to determine whether the standards should be modified. In making this determination, the commission shall seek public input by holding public forums to discuss the implementation and effectiveness of the performance standards. The commission shall submit a report of its findings and recommendations regarding the effectiveness of the standards and the need for modification of the standards to the board and the legislature prior to the convening of the 1999 regular session. The board shall consider and implement the modifications beginning with the 1999-2000 school year.~~

~~(d)] (b)~~ Notwithstanding any law to the contrary, the department shall establish procedures and guidelines for, and shall expand, its statewide assessment program to include norm-referenced testing in the same grades as required by the federal No Child Left Behind Act of 2001 (Public Law 107-110) standards-

based assessment (grades 3 through 8 and one grade in high school) in reading and math, using the most appropriate nationally normed test.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

**ACT 34**

S.B. NO. 119

A Bill for an Act Relating to the Uniform Foreign-Country Money Judgments Recognition Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS  
RECOGNITION ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

§ -2 **Definitions.** In this chapter:

“Foreign country” means a government other than:

- (1) The United States;
- (2) A state, district, commonwealth, territory, or insular possession of the United States; or
- (3) Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government’s courts is initially subject to determination under the full faith and credit clause of the United States Constitution.

“Foreign-country judgment” means a judgment of a court of a foreign country.

§ -3 **Applicability.** (a) Except as otherwise provided in subsection (b), this chapter applies to a foreign-country judgment to the extent that the judgment:

- (1) Grants or denies recovery of a sum of money; and
- (2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (1) A judgment for taxes;
- (2) A fine or other penalty; or
- (3) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

**§ -4 Standards for recognition of foreign-country judgment.** (a) Except as otherwise provided in subsections (b) and (c), a court of this State shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this State may not recognize a foreign-country judgment if:

- (1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
  - (2) The foreign court did not have personal jurisdiction over the defendant; or
  - (3) The foreign court did not have jurisdiction over the subject matter.
- (c) A court of this State need not recognize a foreign-country judgment

if:

- (1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
- (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- (3) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this State or of the United States;
- (4) The judgment conflicts with another final and conclusive judgment;
- (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- (7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- (8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

**§ -5 Personal jurisdiction.** (a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

- (1) The defendant was served with process personally in the foreign country;
- (2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
- (3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
- (5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising

out of business done by the defendant through that office in the foreign country; or

- (6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts of this State may recognize bases of personal jurisdiction other than those listed in subsection (a) as sufficient to support a foreign-country judgment.

**§ -6 Procedure for recognition of foreign-country judgment.** (a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

**§ -7 Effect of recognition of foreign-country judgment.** If the court in a proceeding under section -6 finds that the foreign-country judgment is entitled to recognition under this chapter then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

- (1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and
- (2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

**§ -8 Stay of proceedings pending appeal of foreign-country judgment.** If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

**§ -9 Statute of limitations.** An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

**§ -10 Saving clause.** This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter."

SECTION 2. Chapter 658C, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect upon its approval and shall apply to all actions commenced on or after the effective date of this Act in which the issue of recognition of a foreign-country judgment is raised.

(Approved April 30, 2009.)



## ACT 35

S.B. NO. 164

A Bill for an Act Relating to the Federal Grants Search, Development, and Application Revolving Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to include expenditures for monitoring grant execution, ensuring compliance with grant requirements, and auditing grant expenditures in the allowable uses of the federal grants search, development, and application revolving fund within the department of education. This Act also renames the fund to more accurately reflect its purpose.

SECTION 2. Section 302A-1405, Hawaii Revised Statutes, is amended to read as follows:

**~~“[§302A-1405] Federal grants [search, development, and application] revolving fund.~~** (a) There is established a federal grants ~~[search, development, and application]~~ revolving fund into which shall be deposited the department's share of federal indirect overhead reimbursements, pursuant to section 302A-1404. Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State. The department may expend funds in the federal grants ~~[search, development, and application]~~ revolving fund to search for discretionary grants ~~[and]~~, develop program applications to secure additional revenues for the department~~[-],~~ monitor grant execution, ensure compliance with grant requirements, and audit grant expenditures. Moneys in the revolving fund may be expended for consultant services and operational expenses, including the creation and hiring of temporary staff.

(b) The department shall prepare and submit an annual report on the status of the federal grants ~~[search, development, and application]~~ revolving fund to the legislature. The annual report shall include but not be limited to a list of the grant applications to the federal agencies and the grant awards received.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 36

S.B. NO. 933

A Bill for an Act Relating to Temporary Licensure of Dentists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 448-9.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The board of dental examiners may issue, without examination, a community service license to practice dentistry in the employment of the department of health, a federally qualified health center, Native Hawaiian health systems center, or post-secondary dental auxiliary training program accredited by the American Dental Association Commission on Dental Accreditation. Com-

munity service licensees under this section shall abide by the requirements and conditions placed upon those fully licensed under this chapter.

Eligible candidates shall:

- (1) Provide copies of documentation and credentials that include but are not limited to:
  - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
  - (B) Either of the following:
    - (i) A certificate or other evidence satisfactory to the board of having passed part II of the National Board Dental Examination within five years of the date of request; or
    - (ii) Evidence of active practice of clinical dentistry of not less than one thousand hours per year for the three years immediately prior to the date of request;
- (2) Provide a copy of an active, unrestricted dental practice license from another state;
- (3) Disclose to the board of dental examiners all previous and pending legal or regulatory action relating to claims of malpractice, or personal or professional misconduct; and
- (4) Pay applicable registration fees, which shall be one half of the prevailing biennial registration fee for dentistry.

No person who after July 2, 2004, has failed to pass the license examination administered under this chapter shall have the benefit of a community service dental license."

2. By amending subsection (e) to read:

"(e) Commissioned officers of the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration practicing in the department of health, a federally qualified health center, or Native Hawaiian health systems center shall qualify for a community service license to practice dentistry, which may be issued for the term of the officer's federal duty assignment. Officers shall provide to the board of dental examiners:

- (1) A copy of an active, unrestricted dental practice license from another state; and
- (2) A copy of documentation reflecting official duty assignment to a qualifying community service dental license site."

SECTION 2. Section 448-12, Hawaii Revised Statutes, is amended to read as follows:

**"§448-12 Temporary license.** [(a)] The board of dental examiners may issue without examination to any resident or nonresident otherwise qualified to be examined a temporary license to practice dentistry in the employment of or while under contract with the State or any county, or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively while engaged in that employment or contracted by the department of health to conduct dental education and training, and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the temporary license;

- (2) The three hundred ninety-sixth calendar day following the date of issuance of the temporary license;
- (3) The date on which the results of the licensure examination taken by the person under this chapter are posted by the board; or
- (4) The date on which the board revokes the temporary license;

provided that the board may revoke the temporary license at any time for cause. No person who has failed an examination shall have the benefit of any temporary license.

~~[(b) The board of dental examiners may issue without examination to any resident or nonresident licensed in another state and otherwise qualified to be examined a temporary license to practice dentistry while in the employment of the department of health to provide dental services to Hansen's disease sufferers. The temporary license shall be valid for a period of three years or until the first board examination after the conclusion of the three-year period and only while the person to whom the temporary license is issued is in the employment of the department of health and works under the general direction and supervision of a duly licensed dentist. The temporary license shall not be renewed and shall be reviewed annually by the board of dental examiners for continuance and shall be subject to revocation and suspension as provided in section 448-17. The temporary licensee shall not be eligible for examination by the board of dental examiners while the temporary license is in effect.]~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 37

S.B. NO. 426

A Bill for an Act Relating to Dentistry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to modify dental licensing laws to ensure that dentists participating in an accredited multi-year dental residency program can obtain temporary licensure for the duration of their training.

SECTION 2. Section 448-12, Hawaii Revised Statutes, is amended to read as follows:

**"§448-12 Temporary license.** (a) The board of dental examiners may issue without examination to any resident or nonresident otherwise qualified to be examined a temporary license to practice dentistry in the employment of the State or any county, or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively while engaged in that employment and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the temporary license;

- (2) The three hundred ninety-sixth calendar day following the date of issuance of the temporary license;
- (3) The date on which the results of the licensure examination taken by the person under this chapter are posted by the board; or
- (4) The date on which the board revokes the temporary license;

provided that the board may revoke the temporary license at any time for cause.

No person who has failed an examination shall have the benefit of any temporary license.

(b) The board of dental examiners may issue without examination to any resident or nonresident licensed in another state and otherwise qualified to be examined a temporary license to practice dentistry while in the employment of the department of health to provide dental services to Hansen's disease sufferers. The temporary license shall be valid for a period of three years or until the first board examination after the conclusion of the three-year period and only while the person to whom the temporary license is issued is in the employment of the department of health and works under the general direction and supervision of a duly licensed dentist. The temporary license shall not be renewed and shall be reviewed annually by the board of dental examiners for continuance and shall be subject to revocation and suspension as provided in section 448-17. The temporary licensee shall not be eligible for examination by the board of dental examiners while the temporary license is in effect.

(c) The board of dental examiners may issue a temporary license without examination to any person otherwise qualified to be examined, who is enrolled in a post-doctoral residency program that is accredited and recognized by the American Dental Association Commission on Dental Accreditation. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively under the auspices of the dental residency program and shall be in force until the earliest of the following occurs:

- (1) The date the person completes or leaves the residency program; or
- (2) The date on which the board revokes the temporary license;

provided that the board may revoke the temporary license at any time for cause.

(d) Post-doctoral dental residents who are granted temporary licenses under this section shall:

- (1) Be assigned to affiliated training sites that are restricted to eleemosynary health care organizations, training site hospitals, or university-affiliated training programs, and that shall be visited and accredited by the Commission on Dental Accreditation of the American Dental Association, consistent with the policies of the Commission on Dental Accreditation of the American Dental Association; and
- (2) Act under the direct supervision of the dental residency faculty licensed in Hawaii."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 38

S.B. NO. 862

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to facilitate the collection of the shared appreciation equity lien, deferred sales price lien, and excess proceeds in lieu of any buyback, imposed by the State on the sale of affordable housing properties that received assistance from the Hawaii housing finance and development corporation, which are undergoing foreclosure.

SECTION 2. Section 201H-47, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

(1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:

(A) The original cost to the purchaser, as defined in rules adopted by the corporation;

(B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and

(C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year;

(2) The corporation may purchase the real property either:

(A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this ~~[paragraph]~~ section shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

(i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;

(ii) Any mortgage insured or held by a federal housing agency; and

(iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation;

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property within ten years from the date of purchase for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C); provided further that the purchaser shall obtain the corporation's written consent if any restriction on the transfer of the real property remains applicable;
- (4) After the end of the tenth year from the date of initial purchase or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
  - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
  - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as costs under section 201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
  - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase or execution of the agreement of sale of the real property. If any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and
  - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable; ~~and~~
- (5) Notwithstanding any provision ~~[above]~~ in this section to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time~~[-]; and~~
- (6) Notwithstanding any provision in this section to the contrary, the corporation's share of appreciation in the real property described in paragraph (4)(D):
  - (A) Shall apply when the sales price of the real property that is developed and sold under this chapter is less than the then-current, unencumbered, fair market value of the real property as determined by a real property appraisal obtained prior to the closing of the sale;
  - (B) Shall be a restriction that runs with the land until it is paid in full and released by the corporation, or extinguished pursuant to subsection (e); and

(C) May be paid, in part or in full, at any time after recordation of the sale.”

2. By amending subsection (c) to read:

“(c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

- (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation;
- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the ~~[unit or lot]~~ real property and sell or assign the real property to a person who is a “qualified resident” as defined in section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the ~~[unit]~~ real property as determined in rules adopted pursuant to chapter 91, when applicable; or
- (3) The sale or transfer is of real property subject to a sustainable affordable lease as defined in section 516-1.”

3. By amending subsections (e) and (f) to read:

“(e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; provided that the mortgage is the initial purchase money mortgage, or that the corporation consented to and agreed to subordinate the restrictions to the mortgage when originated, if the mortgage is not the initial purchase money mortgage; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667[;] forty-five days prior to commencing mortgage foreclosure proceedings;

provided that the mortgagee’s failure to provide written notice to the corporation shall not affect the mortgage holder’s rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to its share of appreciation in the real property as determined under this chapter in lien priority when the payment is applicable, and if foreclosure occurs within the ten-year period after the purchase, the corporation shall also be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount [which] that shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost

items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation. In any sale in which the corporation's share of appreciation in real property is a restriction, the terms of the shared appreciation equity program shall be clearly stated and included as an exhibit in any deed, lease, agreement of sale, or any other instrument of conveyance."

SECTION 3. Section 201H-50, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer[-]; provided that the corporation is paid its share of appreciation in the real property as determined by rules adopted pursuant to chapter 91, as applicable."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 30, 2009.)

## ACT 39

S.B. NO. 1108

A Bill for an Act Relating to Native Hawaiians.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 2 of Act 212, Session Laws of Hawaii 2007, is amended as follows:

1. By amending subsection (c) to read:

"(c) The advisory committee shall submit a written interim report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2008 regular session. The advisory committee shall submit ~~[a written final report]~~ annual reports of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2009 regular session[-] and no later than twenty days prior to the convening of the 2010 regular session. The advisory committee shall submit its final report to the legislature no later than twenty days prior to the convening of the 2011 legislative session."

2. By amending subsection (e) to read:

"(e) The 'aha kiole advisory committee shall cease to exist on June 30, ~~[2009.]~~ 2011."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on April 30, 2009, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)



## ACT 40

S.B. NO. 1327

A Bill for an Act Relating to the Rate of Interest Applicable to Overpayments of Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This subsection shall apply to a refund for an overpayment of a tax.

- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (c). The interest shall be allowed and paid at the rate of ~~[two-thirds]~~ one-third of one per cent for each month or fraction thereof, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the first month following the month the return is received, and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director's approval, no interest on the overpayment ~~[will]~~ shall be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the first month following the month the return is received by the director if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.
- (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and ~~[such]~~ the overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first calendar day after the due date of the original return or, if the original return is filed after the prescribed due date, the first month following the month the return is received, to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed to have been made at the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest ~~[which]~~ that would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts ~~[which]~~ that are carried back.

- (4) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the first month following the month the return is received by the director, or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval and shall apply to claims for refund made on or after January 1, 2009.

(Approved May 5, 2009.)

## ACT 41

S.B. NO. 501

A Bill for an Act Relating to the Teacher Education Coordinating Committee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that in the past several years the teacher education coordinating committee has worked to strengthen the efforts of all teacher education institutions in Hawaii to prepare quality teachers for Hawaii’s K-12 schools.

The purpose of this Act is to support the efforts of the teacher education coordinating committee by clarifying the membership of the committee to ensure that all institutions that are state-approved teacher education units have a representative on the committee.

SECTION 2. Section 304A-1202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created an advisory committee to be known as the teacher education coordinating committee to identify, study, take action, or make recommendations on matters of education of common interest to the department of education and institutions of higher learning in Hawaii. The membership of the committee shall include the superintendent of education and the dean of the college of education of the University of Hawaii, who shall serve in alternate years as chairperson of the committee with the superintendent acting as the first chairperson, a representative from each accredited ~~[teacher training institution in Hawaii]~~ Hawaii state-approved teacher education unit, and a representative from the Hawaii teacher standards board. In addition, the superintendent of education and the dean of the college of education may each appoint other members to the committee; provided that the dean of the college of education shall appoint at least two members of the committee from the university who are not within the college of education.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved May 5, 2009.)

## ACT 42

S.B. NO. 1260

A Bill for an Act Relating to Air Pollution Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that financial incentives must be aligned with policies that establish societal and sustainability goals. The legislature further finds, however, that a loophole exists in Hawaii's air pollution control laws, and that this loophole inadvertently acts as a disincentive to reducing pollution from larger pollution sources.

Under section 342B-29, Hawaii Revised Statutes, covered source permit holders must pay fees per ton of regulated air pollutant emitted annually. These fees fund the clean air branch of the department of health and other programs. Covered source permit holders, however, are not assessed fees for pollution above four thousand tons. The legislature finds that this feature of the law is inequitable for covered source permit holders that emit fewer than four thousand tons, and it is a disincentive to large polluters to reduce pollution that exceeds four thousand tons annually.

The purpose of this Act is to eliminate a disincentive to pollution reduction by removing the cap on fees for air pollutant emissions.

SECTION 2. Section 342B-29, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Fees for covered sources shall be based on the number of tons of regulated air pollutant, excluding carbon monoxide, allowed or emitted by the permitted source and shall not be less than \$25 per ton per year. ~~[A covered source shall not be assessed for emissions of a regulated air pollutant in excess of four thousand tons per year.]”~~

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken.

SECTION 5. This Act shall take effect upon its approval.

(Became law on May 5, 2009, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 43

S.B. NO. 896

A Bill for an Act Relating to Civil Service Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated

- personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
  - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
  - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
  - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
  - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
  - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
  - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
  - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
  - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
  - (19) Household employees at the official residence of the president of the University of Hawaii;

- (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth [~~challenge academy~~] and adult education programs.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

## ACT 44

H.B. NO. 1414

A Bill for an Act Relating to Metal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 197, Session Laws of Hawaii 2007, as amended by section 20 of Act 16, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect on July 1, 2007[, and shall be repealed on July 1, 2009; provided that sections 445-231, 445-233<sup>1</sup> and 445-235, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act]."

SECTION 2. Act 53, Session Laws of Hawaii 2008, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect on July 1, 2008[, and shall be repealed on July 1, 2009; provided that sections 445-231 and 445-233, Hawaii

Revised Statutes, shall be reenacted in the form in which those sections read on the day before the effective date of Act 197, Session Laws of Hawaii 2007[.]”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect on June 30, 2009.

(Approved May 6, 2009.)

**Note**

1. Prior to amendment a comma appeared here.

**ACT 45**

S.B. NO. 979

A Bill for an Act Relating to Commercial Drivers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) Except as provided in [§]paragraph[§] (2), for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on [the license] a category (1), (2), or (3) license under section 286-102(b) that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;
- (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):

- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
- (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and
  - (F) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under



this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4).”

SECTION 2. Act 171, Session Laws of Hawaii 2008, is amended by amending section 8 to read as follows:

“SECTION 8. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-61 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows:

- (1) Except as provided in paragraphs (2) and (5), for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than one year nor more than two years on the following conditions:

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) (i) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on ~~[the license]~~ a category (1), (2), or (3) license under section 286-102(b) that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; or

(ii) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than \$150 but not more than \$1,000;

(D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and<sup>1</sup>

(E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;

- (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and<sup>1</sup>
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:
  - (A) A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and<sup>1</sup>
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than three years nor more than five years on the following conditions:
  - (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Three-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;

- (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and<sup>2</sup>
- (5) In addition to a sentence imposed under paragraphs (1) through (4), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4). Notwithstanding paragraph (1), the probation period for a person sentenced under this paragraph shall be not less than two years.
- (c) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:
  - (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or
  - (2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).
- (d) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.
- (e) A request made pursuant to subsection (d) shall be accompanied by:
  - (1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
  - (2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day, not to exceed twelve hours per day, the defendant will drive for purposes of employment.
- (f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:
  - (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
  - (2) Only the vehicle specified; and
  - (3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.
- (g) Notwithstanding any other law to the contrary, any:
  - (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
  - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the in-

fluence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section.

(h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(i) Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle pursuant to subsection (b), the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period.

(j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-5<sup>3</sup>, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

(l) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(m) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

## Notes

1. "and" and subparagraph (E) should be underscored.
2. Subparagraph (E) should be underscored.
3. Prior to amendment "291E-A" appeared here.

## ACT 46

S.B. NO. 1056

A Bill for an Act Relating to Commercial Drivers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-234, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any employer who is convicted of a violation of subsection (b) (3) shall be subject to a fine of not less than \$2,750 nor more than [~~\$11,000-~~ \$25,000."]

SECTION 2. Section 286-235, Hawaii Revised Statutes, is amended to read as follows:

**"§286-235<sup>1</sup> Commercial driver's license required.** (a) No person shall drive a commercial motor vehicle unless the person holds a valid commercial driver's license and valid applicable endorsements for the vehicle the person is driving, except when driving under a commercial driver's instruction permit and accompanied by the holder of a valid commercial driver's license for the vehicle being driven.

(b) No person shall drive a commercial motor vehicle while the person's driver's license or permit is suspended, revoked, or canceled, or while subject to a disqualification~~[- or in violation of an out-of-service order].~~

~~[(c) Any person who holds a category (4), (5), (6), (7), (8), (9), or (10) license that is valid on March 31, 1991, may continue to drive with that license until that person's next birthday, at which time the person shall be permitted to continue to drive only if the person obtains either a commercial driver's license or a reclassified category (4) license under section 286-102(b).]~~

(c) No person shall drive a commercial motor vehicle in violation of an out-of-service order."

SECTION 3. Section 286-241.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The examiner of drivers may suspend, revoke, or cancel any commercial driver's license or permit without a hearing when the examiner of drivers has probable cause to believe that the licensee is disqualified under section 286-240~~[(e) through (h)].~~"

SECTION 4. Section 286-249, Hawaii Revised Statutes, is amended to read as follows:

**"§286-249 Penalty.** (a) Any person who drives a commercial motor vehicle in the [~~State~~ state] without a valid commercial driver's license or permit, or while the person's driving privileges are suspended, revoked, or canceled, or while disqualified from driving a commercial motor vehicle, shall be:

- (1) Disqualified from driving a commercial motor vehicle for a period of not less than one year and up to life;
- (2) Fined not less than \$500 but not more than \$1,000; and
- (3) Imprisoned not more than one year;

provided that the court shall have discretion to impose either a fine or imprisonment, or both.

(b) A driver who is convicted of violating an out-of-service order shall be fined not less than ~~[\$1,100]~~ \$2,500 nor more than ~~[\$2,750]~~ \$4,000 for a first conviction and not less than \$5,000 nor more than \$7,500 for a second or subsequent conviction, in addition to the driving disqualification of subsection (a)(1) and section 286-240(g) and (h).

(c) Any person convicted under or found in violation of section 286-242(a) shall be fined not more than \$200.

(d) Notwithstanding subsection (a)(2), any person convicted under or found in violation of section 286-242(c) shall be fined not more than \$500."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

#### Note

1. Prior to amendment section number was bracketed.

## ACT 47

H.B. NO. 267

A Bill for an Act Relating to the Motor Vehicle Rental Industry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ease the interisland transportation of rental motor vehicles. Tourists, from time to time, become frustrated and cancel their plans to take their rental vehicle to a neighbor island by interisland water carrier due to lost or misplaced documents relating to their rental motor vehicle. The passage of this Act will significantly reduce these problems by reducing current restrictions for such documents as they apply to rental motor vehicles.

SECTION 2. Section 286-271, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) This section shall not apply to:

- (1) Any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more;
- (2) Licensed dealers who periodically ship in quantities of ten vehicles or more, or whose primary business is the auction of insurance salvage vehicles; [or]

- (3) ~~[Drivers]~~ Except for a lessee of a rental motor vehicle under paragraph (4), drivers of vehicles [traveling on an interisland ferry] transported by any water carrier authorized by the public utilities commission to transport vehicles interisland; provided that [such drivers present] the driver presents identification [of the driver], a current certificate of registration for the vehicle, and proof of motor vehicle insurance. The interisland [ferry] water carrier shall keep a record of transporting the vehicle by recording the vehicle identification number and retaining the information for three years after the date of travel[-]; or
- (4) A lessee of a rental motor vehicle; provided that:
  - (A) The rental motor vehicle is transported by any water carrier authorized by the public utilities commission to transport vehicles interisland;
  - (B) The water carrier has a written agreement with the owner of the rental motor vehicle; and
  - (C) The water carrier records and retains the information required under subsections (d) and (f).

For purposes of this subsection, "lessee" and "rental motor vehicle" have the same meanings as those terms are defined in section 437D-3."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved May 6, 2009.)

## ACT 48

H.B. NO. 319

A Bill for an Act Relating to Family Leave.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 398, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§398- Posting of notices.** Every employer shall post and keep posted notices clearly setting forth the rights of employees provided by this chapter in a form prescribed by the director in conspicuous places in every establishment where any employee is employed so as to permit the employee to observe readily a copy on the way to or from the employee's place of employment."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

H.B. NO. 1075

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10H-217.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) An insurer shall use the forms in ~~Appendices~~ Appendix B [and F] of the April[,] 2002, NAIC Model Long-Term Care Insurance Model Regulation and Appendix F of the December 2006, NAIC Model Long-Term Care Insurance Model Regulation to comply with the requirements of subsections (b) and (c).”

SECTION 2. Section 431:10H-226.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An insurer shall provide the information listed in this subsection to the commissioner thirty days prior to making a long-term care insurance form available for sale as follows:

- (1) A copy of the disclosure documents required in section ~~[431:10H-224;]~~ 431:10H-217.5; and
- (2) An actuarial certification consisting of at least the following:
  - (A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
  - (B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;
  - (C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;
  - (D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:
    - (i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;
    - (ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;
    - (iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and
    - (iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if ~~[such a]~~ that statement cannot be made, a complete description of the situations where this does not occur; provided that an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; provided further



that if the gross premiums for certain age groups are inconsistent with this requirement, the commissioner may request a demonstration under subsection (c) based on a standard age distribution; and

- (E) With respect to premium rate schedules:
  - (i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or
  - (ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.”

SECTION 3. Section 431:10H-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this State, directly or through producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued;
- (3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”;
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance currently has long-term care insurance and the types and amounts of any ~~[such]~~ long-term care insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;
- (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subsection ~~[(a)]~~;
- (6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer, at solicitation, shall provide written notice to the prospective policyholder or certificate holder of a state senior insurance counseling program including the name, address, and telephone number of the program;
- (7) For long-term care health insurance policies and certificates, use the terms “noncancellable” or “level premium” only when the policy or certificate conforms to section 431:10H-202;
- (8) Provide copies of the disclosure forms required in section 431:10H-217.5(c) to the applicant; and
- (9) Provide an explanation of contingent benefit upon lapse provided for in section 431:10H-233(f) ~~[and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in section 431:10H-233(g).]~~”

SECTION 4. Section 431:10H-233, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (f)[;] or (g), a replacing insurer that purchases purchased or assumes otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved May 6, 2009.)

## ACT 50

H.B. NO. 1270

A Bill for an Act Relating to Renewable Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that given the alarming rise and precipitous drop of oil prices over the past year and a general lack of confidence in long-term fuel pricing forecasts, the regulatory standard of avoided cost has been difficult to define and has created barriers in the negotiations process for power purchase agreements, especially for clean energy products.

Therefore, the purpose of this Act is to refocus the regulatory standard to a methodology that is just and reasonable by significantly reducing any linkages between the volatile prices of fossil fuels and the rate for nonfossil fuel generated electricity. This Act also potentially enables utility customers to share in the benefits of price stability and fuel cost savings resulting from the use of nonfossil fuel generated electricity.

SECTION 2. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

~~[In the exercise of its authority to determine the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be more than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy.]~~

The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil

fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.”

SECTION 3. Section 269-91, Hawaii Revised Statutes, is amended by amending the definition of “cost-effective” to read as follows:

““Cost-effective” means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs or as the commission otherwise determines to be just and reasonable consistent with the methodology set by the public utilities commission in accordance with section 269-27.2.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

## ACT 51

S.B. NO. 161

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 89, Session Laws of Hawaii 1996, established salary ranges for department of education teachers that are no longer applicable. The purpose of this Act is to repeal the statutory provision relating to teacher salary ranges, as the teacher salary schedules are negotiated pursuant to section 89-9, Hawaii Revised Statutes, and as provided in section 302A-624, Hawaii Revised Statutes.

SECTION 2. Section 302A-622, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Aerospace.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**"§201- Aerospace advisory committee.** (a) There is established an aerospace advisory committee within the office of aerospace development of the department of business, economic development, and tourism for administrative purposes. The committee shall be composed of sixteen members appointed by the governor, as provided in section 26-34, except as otherwise provided in this section. Of the sixteen members:

- (1) Three members shall be representatives of the aerospace industry. One member shall be appointed from a list of nominees submitted by the president of the senate, and one member shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (2) Three members shall be representatives of the aerospace industry in this state. One member shall be appointed from a list of nominees submitted by the president of the senate, and one member shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) One member shall be a representative of investment banking;
- (4) Four members shall represent the economic development boards of Kauai, Oahu, Maui, and Hawaii, respectively, to be appointed, respectively, from a list of nominees submitted by each of these economic development boards;
- (5) Four members shall represent the department of education, the University of Hawaii at Manoa, the University of Hawaii at Hilo, and the University of Hawaii community college system, respectively, to be appointed, one each, from a list of nominees submitted by the department of education, the University of Hawaii at Manoa, the University of Hawaii at Hilo, and the University of Hawaii community college system, respectively; and
- (6) One member, not appointed under paragraphs (1) through (5) of this subsection, to serve as chairperson, who shall have experience, knowledge, and expertise in space-related activities and development in the global and state aerospace industry.

(b) All members shall serve for a term of two years. Any vacancies occurring in the membership of the committee shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(c) The purpose of the aerospace advisory committee shall be to advise and assist the legislature and state agencies in monitoring, assessing, and promoting aerospace development statewide by:

- (1) Tracking state, national, and global trends and priorities in aerospace development;
- (2) Assisting in identifying and promoting opportunities to expand and diversify aerospace development and aerospace-related industries in this state;

- (3) Supporting the office of aerospace development's effort in networking with national and international aerospace agencies, institutions, and organizations to develop public-private partnerships to support the growth of aerospace development and aerospace-related industries in this state;
- (4) Recommending innovative scientific, educational, and economic strategies and government and education policies to promote the growth and diversification of the aerospace industry in this state; and
- (5) Appointing temporary working groups, as deemed appropriate in the committee's discretion, to assist the office of aerospace development in research and analysis activities required to complete any report to be submitted to the legislature and the governor by the office of aerospace development.

(d) Members of the aerospace advisory committee shall receive no compensation but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties as members of the committee.

(e) The committee shall convene for quarterly meetings in the city and county of Honolulu; provided that any member who is not a state resident may attend a meeting by teleconference.

(f) Administrative support to the committee, including the development and dissemination of reports and advisory opinions, shall be provided by the department of business, economic development, and tourism."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 53**

H.B. NO. 1436

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-

- family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
  - (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
  - (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
  - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
  - (9) Roadside stands for the sale of agricultural products grown on the premises;
  - (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
  - (11) Agricultural parks;
  - (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
    - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
    - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
    - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
  - (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
  - (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible

with agriculture uses and cause minimal adverse impact on agricultural land;

- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities; [or]

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection[-]; or

- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation

of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 6, 2009.)

## ACT 54

S.B. NO. 718

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§286- Complete streets.** (a) The department of transportation and the county transportation departments shall adopt a complete streets policy that seeks to reasonably accommodate convenient access and mobility for all users of the public highways within their respective jurisdictions as described under section 264-1, including pedestrians, bicyclists, transit users, motorists, and persons of all ages and abilities.

(b) This section shall apply to new construction, reconstruction, and maintenance of highways, roads, streets, ways, and lanes located within urban, suburban, and rural areas, if appropriate for the application of complete streets.

(c) This section shall not apply if:

- (1) Use of a particular highway, road, street, way, or lane by bicyclists or pedestrians is prohibited by law, including within interstate highway corridors;
- (2) The costs would be excessively disproportionate to the need or probable use of the particular highway, road, street, way, or lane;
- (3) There exists a sparseness of population, or there exists other available means, or similar factors indicating an absence of a future need; or
- (4) The safety of vehicular, pedestrian, or bicycle traffic may be placed at unacceptable risk."

SECTION 2. (a) There is established a temporary task force, exempt from section 26-34, Hawaii Revised Statutes, to review existing state and county highway design standards and guidelines, for the purpose of:

- (1) Determining standards and guidelines that can be established to apply statewide and within each county to provide consistency for all highway users;



- (2) Proposing changes to state and county highway design standards and guidelines; and
- (3) Making recommendations for restructuring procedures, rewriting design manuals, and creating new measures to track success, within one year after implementation of the recommendations under subsection (c).
- (b) The members of the task force shall be selected by the director of transportation, and shall include one member representing:
  - (1) The department of transportation;
  - (2) The department of health;
  - (3) Each county's public works department or transportation department;
  - (4) Hawaii Bicycling League;
  - (5) Peoples Advocacy for Trails Hawai'i;
  - (6) AARP Hawaii;
  - (7) Hawaii Highway Users Alliance;
  - (8) University of Hawaii's department of urban and regional planning or department of civil and environmental engineering;
  - (9) Developers;
  - (10) Federal Highway Administration; and
  - (11) Other interested parties.
- (c) The task force shall submit to the legislature, through the department of transportation, the following:
  - (1) An interim progress report no later than twenty days prior to the convening of the regular session of 2010; and
  - (2) A final report, including findings, recommendations, and proposed legislation, no later than twenty days prior to the convening of the regular session of 2011.
- (d) The task force shall cease to exist upon filing of its final report.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval; provided that section 1 shall apply to any development for which planning or design commences on or after January 1, 2010.

(Approved May 6, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 55**

S.B. NO. 301

A Bill for an Act Relating to the Hawaii Registered Agents Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
THE HAWAII REGISTERED AGENTS ACT**

**§ -1 Definitions.** For purposes of this chapter only:

“Appointment of agent” means a statement appointing an agent for service of process filed under section -4.

"Commercial registered agent" means an individual or a domestic or foreign entity authorized to transact business in this state and listed under section -5.

"Director" means the director of commerce and consumer affairs.

"Domestic entity" means an entity whose internal affairs are governed by the laws of this state.

"Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

- (1) An individual;
- (2) A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
- (3) An association or relationship that is not a partnership by reason of section 425-109 or a similar provision of the law of any other jurisdiction;
- (4) A decedent's estate; or
- (5) A public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

"Filing entity" means an entity that is created by the filing of a public organic document.

"Foreign entity" means an entity other than a domestic entity.

"Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the director by a foreign entity.

"Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

- (1) Receive or demand access to information concerning, or the books and records of, the entity;
- (2) Vote for the election of the governors of the entity; or
- (3) Receive notice of or vote on any or all issues involving the internal affairs of the entity.

"Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

"Individual" means a natural person.

"Interest" means a:

- (1) Governance interest in an unincorporated entity;
- (2) Transferable interest in an unincorporated entity; or
- (3) Share or membership in a corporation.

"Interest holder" means a direct holder of an interest.

"Jurisdiction of organization," with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

"Noncommercial registered agent" means a person that is not listed as a commercial registered agent under section -5 and that is:

- (1) An individual or a domestic or foreign entity that is authorized to transact business in this state and that serves in this state as the agent for service of process of an entity; or
- (2) The individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to section -4(a)(2)(B).

"Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the director.

"Nonresident LLP statement" means a statement of:

- (1) Qualification of a domestic limited liability partnership that does not have an office in this state; or

- (2) Foreign qualification of a foreign limited liability partnership that does not have an office in this state.

“Organic law” means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

“Organic rules” means the public organic document and private organic rules of an entity.

“Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

“Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

“Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the director.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Registered agent” means a commercial registered agent or a noncommercial registered agent.

“Registered agent filing” means:

- (1) The public organic document of a domestic filing entity;
- (2) A nonresident limited liability partnership statement;
- (3) A foreign qualification document; or
- (4) An appointment of agent.

“Represented entity” means a:

- (1) Domestic filing entity;
- (2) Domestic or qualified foreign limited liability partnership that does not have an office in this state;
- (3) Qualified foreign entity;
- (4) Domestic entity that is not a filing entity for which an appointment of agent has been filed; or
- (5) Nonqualified foreign entity for which an appointment of agent has been filed.

“Sign” means, with present intent to authenticate or adopt a record to:

- (1) Execute or adopt a tangible symbol; or
- (2) Attach to or logically associate with the record an electronic sound, symbol, or process.

“Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

“Type,” with respect to an entity, means a generic form of entity:

- (1) Recognized at common law; or
- (2) Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

**§ -2 Fees.** (a) The director shall collect the following fees when a filing is made under this chapter:

- (1) Commercial registered agent listing statement, \$100;
- (2) Commercial registered agent termination statement, \$25;
- (3) Statement of change, \$25 for each affected entity; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected entity;

- (4) Statement of resignation, \$25 for each affected entity; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected entity;
- (5) Statement appointing an agent for service of process, \$25 for each affected entity; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected entity.

(b) The director shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

- (1) For copying, twenty-five cents per page; and
- (2) For certifying the copy, \$10 per certified copy.

**§ -3 Addresses in filings.** Whenever a provision of this chapter other than section -10(a)(4) requires that a filing state an address, the filing shall state an actual street address or rural route box number in the state.

**§ -4 Appointment of registered agent.** (a) An entity's or other person's registered agent filing, as defined by this chapter, shall state:

- (1) The name of the represented entity's commercial registered agent; or
- (2) If the entity does not have a commercial registered agent:
  - (A) The name of the individual or the name, type, and jurisdiction of organization of the entity's noncommercial registered agent and the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered; or
  - (B) The title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office in the State of that person; provided that the office or other position stated in the filing shall comport with the requirements of sections 414-64, 414D-74, 415A-27, 425-21, 425E-117, and 428-110.

(b) The appointment of a registered agent pursuant to subsection (a)(1) or (2)(A) is an affirmation by the represented entity that the agent has consented to serve as such.

**§ -5 Listing of commercial registered agent.** (a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the director a certified commercial registered agent listing statement signed by or on behalf of the person that states:

- (1) The name of the individual or the name, type, and jurisdiction of organization of the entity;
- (2) That the person is in the business of serving as a commercial registered agent in the state; and
- (3) The address of a place of business of the person in the state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(b) The name of a person filing a commercial registered agent listing statement shall comport with the requirements of section 414-51, 414D-61, 415A-8, 425-6, 425E-108, or 428-105, whichever is applicable. If the name of a foreign entity or individual is substantially identical to another name in the business registry, the person shall adopt a fictitious name that is not substantially identical and deliver to the director for filing a copy of a certificate of registration of a trade name and use that name in its statement and when it does business in the State as a commercial registered agent.

(c) A commercial registered agent listing statement takes effect on filing.

(d) The director shall note the filing of the commercial registered agent listing statement in the business registry maintained by the director for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

**§ -6 Termination of listing of commercial registered agent.** (a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the director a commercial registered agent termination statement signed by or on behalf of the agent that states:

- (1) The name of the agent as currently listed under section -5; and
- (2) That the agent is no longer in the business of serving as a commercial registered agent in the state.

(b) A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.

(c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided by law. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

**§ -7 Change of registered agent by entity.** (a) A represented entity may change the information currently on file under section -4(a) by filing with the director a certified statement of change signed on behalf of the entity that states the:

- (1) Name of the entity; and
- (2) Information that is to be in effect as a result of the filing of the statement of change.

(b) Interest holders or governors of a domestic entity need not approve the filing of a:

- (1) Statement of change under this section; or
- (2) Similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the agent has consented to serve as such.

(d) A statement of change filed under this section takes effect on filing.

**§ -8 Change of name or address by noncommercial registered agent.** (a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to section -4(a), the agent shall file with the director, with respect to each entity represented by the agent, a certified statement of change signed by or on behalf of the agent that states:

- (1) The name of the entity;
  - (2) The name and address of the agent as currently in effect with respect to the entity;
  - (3) If the name of the agent has changed, its new name; and
  - (4) If the address of the agent has changed, the new address.
- (b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**§ -9 Change of name, address, or type of organization by commercial registered agent.** (a) If a commercial registered agent changes its name, its address as currently listed under section -5(a), or its type or jurisdiction of organization, the agent shall file with the director a certified statement of change signed by or on behalf of the agent which states:

- (1) The name of the agent as currently listed under section -5(a);
- (2) If the name of the agent has changed, its new name;
- (3) If the address of the agent has changed, the new address; and
- (4) If the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity that has filed to be represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section within thirty days of the address change, the director may cancel the listing of the agent under section -5. A cancellation under this subsection has the same effect as a termination under section -6. Promptly after canceling the listing of an agent, the director shall serve notice in a record in the manner provided by law on:

- (1) Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided by law; and
- (2) The agent, stating that the listing of the agent has been canceled under this section.

**§ -10 Resignation of registered agent.** (a) A registered agent may resign at any time with respect to a represented entity by filing with the director a certified statement of resignation signed by or on behalf of the agent that states:

- (1) The name of the entity;
- (2) The name of the agent;
- (3) That the agent resigns from serving as agent for service of process for the entity; and
- (4) The name and address of the person to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(c) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

**§ -11 Duties of registered agent.** The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- (2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;
- (3) If the agent is a noncommercial registered agent, to keep current the information required by section -4(a) in the most recent registered agent filing for the entity; and
- (4) If the agent is a commercial registered agent, to keep current the information listed for it under section -5(a).

**§ -12 Jurisdiction and venue.** The appointment or maintenance of a registered agent in the state does not by itself create the basis for personal jurisdiction over the represented entity in the state. The address of the agent does not determine venue in an action or proceeding involving the entity.

**§ -13 Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 United States Code Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code Section 7003(b)."

**SECTION 2.** Section 414-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Written notice to a domestic or foreign corporation (authorized to transact business in this [State] state) may be addressed to its registered agent [~~at its registered office~~] or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority."

**SECTION 3.** Section 414-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;
- (2) Articles of amendment, \$25;
- (3) Restated articles of incorporation, \$25;
- (4) Articles of conversion or merger, \$100;
- (5) Articles of merger (subsidiary corporation), \$50;
- (6) Articles of dissolution, \$25;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- [(8)] (8) Agent's statement of change of registered office, \$25 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made, the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of two hundred;
- [(9)] (9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, \$25;
- [(10)] (10) Application for a certificate of authority, \$100;
- [(11)] (11) Application for a certificate of withdrawal, \$25;

- ~~[(12)]~~ (11) Reservation of corporate name, \$10;
- ~~[(13)]~~ (12) Transfer of reservation of corporate name, \$10;
- ~~[(14)]~~ (13) Good standing certificate, \$5;
- ~~[(15)]~~ (14) Special handling fee for review of corporation documents, excluding articles of conversion or merger, \$25;
- ~~[(16)]~~ (15) Special handling fee for review of articles of conversion or merger, \$75;
- ~~[(17)]~~ (16) Special handling fee for certificates issued by the department, \$10 per certificate; ~~[and]~~
- ~~[(18)]~~ (17) Special handling fee for certification of documents, \$10[-]; ~~and~~
- ~~[(19)]~~ (18) For filings relating to registered agents, the fees established by section -2."

SECTION 4. Section 414-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414-51;
- (2) The number of shares the corporation is authorized to issue;
- (3) The mailing address of the corporation's initial principal office~~[-the street address of the corporation's initial registered office, and the name of its initial registered agent at its initial registered office;]~~ and the information required by section -4(a); and
- (4) The name and address of each incorporator."

SECTION 5. Section 414-61, Hawaii Revised Statutes, is amended to read as follows:

**"§414-61 Registered ~~[office and registered]~~ agent.** Each corporation shall continuously maintain in this [State:

- (1) ~~A registered office that may be the same as any of its places of business; and~~
- (2) ~~A] state a registered agent, who shall have a business address in this state and may be:~~
  - ~~[(A)]~~ (1) An individual who resides in this [State and whose business office is identical with the registered office] state;
  - ~~[(B)]~~ (2) A domestic entity authorized to transact business or conduct affairs in this [State whose business office is identical with the registered office;] state; or
  - ~~[(C)]~~ (3) A foreign entity authorized to transact business or conduct affairs in this [State whose business office is identical with the registered office;] state."

SECTION 6. Section 414-62, Hawaii Revised Statutes, is amended to read as follows:

**"§414-62 Designation or change of ~~[registered office or]~~ registered agent.** (a) A corporation that does not already have a ~~[registered office and]~~ registered agent shall designate its ~~[registered office and]~~ registered agent by ~~[delivering to the department director for filing a statement of designation that sets forth:~~

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and~~



- (3) ~~That the street addresses of its registered office and agent shall be identical.] complying with section -4.~~

(b) A corporation may change its ~~[registered office or its] registered agent by [delivering to the department director for filing a statement of change that sets forth:~~

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and agent shall be identical.] complying with section -7.~~

(c) ~~If the registered [agent's street address changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.] agent changes its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of section -8 or -9, whichever is applicable."~~

SECTION 7. Section 414-63, Hawaii Revised Statutes, is amended to read as follows:

**"§414-63 Resignation of registered agent.** ~~[(a)]~~ A registered agent may resign from the registered agent's appointment by ~~[signing and delivering to the department director for filing the signed statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.~~

~~(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.] complying with the requirements of section -10."~~

SECTION 8. Section 414-371, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**"(b)** The corporation shall commence the proceeding in the circuit court. If the corporation is a foreign corporation ~~[without a registered office in this State]~~, it shall commence the proceeding in the county in this ~~[State]~~ state where the ~~[registered]~~ principal office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located~~[-]~~ or, if the domestic corporation did not have its principal office in this state at the time of the transaction, then in the city and county of Honolulu."

SECTION 9. Section 414-387, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**"(b)** The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located (or, if none in this ~~[State, its registered office]~~ is or was last located; state, in the city and county of Honolulu;
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice."

SECTION 10. Section 414-401, Hawaii Revised Statutes, is amended to read as follows:

**"§414-401 Grounds for administrative dissolution.** The department director may commence a proceeding under section 414-402 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name [~~or business address~~] of the agent as required under [~~this~~] chapter[-] \_\_\_\_."

SECTION 11. Section 414-412, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in circuit court. Venue for a proceeding brought by any other party named in section 414-411 lies in the county where a corporation's principal office is or was located (or, if none in this [~~State, its registered office~~] is or was last located;) state, in the city and county of Honolulu.)"

SECTION 12. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may apply for a certificate of authority to transact business in this [~~State~~] state by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this [~~State~~] state, a corporate name that satisfies the requirements of section 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation;
- (4) The mailing address of the corporation's principal office[~~, the street address of its registered office in this State, and the name of its registered agent at its registered office in this State;~~] and the information required by section -4(a); and
- (5) The names and usual business addresses of its current directors and officers."

SECTION 13. Section 414-437, Hawaii Revised Statutes, is amended to read as follows:

**"§414-437 Registered [~~office and registered~~] agent of foreign corporation.** Each foreign corporation authorized to transact business in this [~~State~~] state must continuously maintain in this [~~State~~]:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A] state a registered agent, who may be:  
[~~(A)~~] (1) An individual who resides in this [~~State and whose business office is identical with the registered office~~] state;

- ~~[(B)]~~ (2) A domestic entity authorized to transact business in this ~~[State whose business office is identical with the registered office]~~ state; or
- ~~[(C)]~~ (3) A foreign entity authorized to transact business in this ~~[State whose business office is identical with the registered office]~~ state.”

SECTION 14. Section 414-438, Hawaii Revised Statutes, is amended to read as follows:

**“§414-438 Change of ~~[registered office or]~~ registered agent of foreign corporation.** (a) A foreign corporation authorized to transact business in this ~~[State]~~ state may change its ~~[registered office or its]~~ registered agent by ~~[delivering to the department director for filing a statement of change that sets forth:~~

- (1) Its name;
- (2) ~~The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.]~~ complying with the requirements of section -7.

(b) If a registered agent changes ~~[the street address of the agent's business office, the agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.]~~ its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of section -8 or -9, whichever is applicable.”

SECTION 15. Section 414-439, Hawaii Revised Statutes, is amended to read as follows:

**“§414-439 Resignation of registered agent of foreign corporation.** ~~[(a)]~~ The registered agent of a foreign corporation may resign from the registered agent's appointment by ~~[signing and delivering to the department director for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~(b) The registered agent shall attach the filing receipt to a copy of the statement of resignation and mail the copy and receipt to the registered office if not discontinued. The registered agent shall mail a second copy to the foreign corporation at its principal office address shown in its most recent annual report.~~

~~(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.]~~ complying with the requirements of section -10.”

SECTION 16. Section 414-472, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each domestic corporation, and each foreign corporation authorized to transact business in this ~~[State,]~~ state, shall deliver to the department director for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office~~[- the address of its registered office in this State, and the name of its registered agent at its registered office in this State;]~~ and the information required by section -4(a);
- (3) The names and business addresses of its directors and officers; and
- (4) A brief description of the nature of its business.

Domestic corporations shall also provide the total number of authorized shares, itemized by class and series, if any, within each class, and the total number of issued and outstanding shares, itemized by class and series, if any, within each class."

SECTION 17. Section 414D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$10;
- (3) Restated articles of incorporation, \$10;
- (4) Articles of merger, \$50;
- (5) Articles of conversion, \$50;
- (6) Articles of dissolution, \$10;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$10;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$10;
- (11) Reservation of corporate name, \$10;
- (12) Transfer of reservation of corporate name, \$10;
- (13) Good standing certificate, \$5;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or conversion, \$25;
- (15) Special handling fee for review of articles of conversion or merger, \$75;
- (16) Special handling fee for certificates issued by the department, \$10 per certificate;
- (17) Special handling fee for certification of documents, \$10; and
- (18) ~~[Agent's statement of change of registered office, \$10 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation.]~~ For filings relating to registered agents, the fees established by section -2."

SECTION 18. Section 414D-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
- (2) The mailing address of the corporation's initial principal office~~[- the street address of the corporation's initial registered office, and the~~

- ~~name of its initial registered agent at its initial registered office;]~~ and the information required by section -4(a);
- (3) The name and address of each incorporator;
  - (4) Whether or not the corporation will have members; and
  - (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.”

SECTION 19. Section 414D-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court of the county where a corporation’s principal office (or, if none in this ~~[State, its registered office)]~~ state, in the city and county of Honolulu) is located may summarily order a meeting to be held:

- (1) On application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation’s fiscal year or fifteen months after its last annual meeting;
- (2) On application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty days after the date it was required to be held; or
- (3) On application of a member or members entitled to call a special meeting, who signed a demand for a special meeting valid under section 414D-102.”

SECTION 20. Section 414D-109, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the corporation refuses to allow a member, a member’s agent, or a member’s attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where a corporation’s principal office (or if none in this ~~[State, its registered office)]~~ state, in the city and county of Honolulu) is located, on application of the member, may summarily order the inspection or copying at the corporation’s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member’s costs (including reasonable counsel fees) incurred to obtain the order.”

SECTION 21. Section 414D-247, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation’s principal office (or, if none in this ~~[State, its registered office)]~~ state, in the city and county of Honolulu) is or was last located;
- (2) List the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.”

SECTION 22. Section 414D-248, Hawaii Revised Statutes, is amended to read as follows:

**“§414D-248 Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under ~~[this]~~ chapter[-] \_\_\_\_."

SECTION 23. Section 414D-273, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may apply for a certificate of authority to transact business in this [State] state by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this [State,] state, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation;
- (4) The mailing address of the corporation's principal office~~[-, the street address of its registered office in this State, and the name of its registered agent at its registered office in this State;]~~ and the information required by section -4(a);
- (5) The names and usual business addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members."

SECTION 24. Section 414D-277, Hawaii Revised Statutes, is amended to read as follows:

**"§414D-277 Registered ~~[office and registered]~~ agent of foreign corporation.** Each foreign corporation authorized to transact business in this [State] state shall continuously maintain in this [State:

- (1) ~~A registered office that may be the same as any of its places of business; and~~
- (2) ~~A]~~ state a registered agent, who shall have a business address in this state and may be:
  - ~~[(A)]~~ (1) An individual who resides in this [State and whose business office is identical with the registered office] state;
  - ~~[(B)]~~ (2) A domestic entity authorized to transact business in this [State whose office is identical with the registered office] state;
  - or
  - ~~[(C)]~~ (3) A foreign entity authorized to transact business in this [State whose business office is identical with the registered office] state."

SECTION 25. Section 414D-278, Hawaii Revised Statutes, is amended to read as follows:

**"§414D-278 Change of ~~[registered office or]~~ registered agent of foreign corporation.** (a) A foreign corporation authorized to transact business in this [State] state may change its ~~[registered office or its]~~ registered agent by ~~[delivering to the department director for filing a statement of change that sets forth:~~

- (1) The corporation's name;

- (2) ~~The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and the office of its registered agent shall be identical.]~~ complying with the requirements of section -7.

(b) If a registered agent changes ~~[the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.]~~ its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of chapter -.

SECTION 26. Section 414D-279, Hawaii Revised Statutes, is amended to read as follows:

**“[[§414D-279]] Resignation of registered agent of foreign corporation.**

~~[(a)] The registered agent of a foreign corporation may resign as agent by [signing and delivering to the department director for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~(b) After filing the statement, the registered agent shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The registered agent shall mail a second copy to the foreign corporation at its principal office address shown in its most recent annual report.~~

~~(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty first day after the date on which the statement is filed.]~~ complying with the requirements of section -10.”

SECTION 27. Section 414D-283, Hawaii Revised Statutes, is amended to read as follows:

**“§414D-283 Grounds for revocation of certificate of authority.** The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this [State] state if:

- (1) The corporation fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two years;
  - (C) Appoint and maintain an agent for service of process as required; or
  - (D) File a statement of a change in the name or business address of the agent as required[;] by chapter -; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 28. Section 414D-304, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

~~“(a) If a corporation does not allow a member who complies with section 414D-302(a) to inspect and copy any records required by that section to be available for inspection, the court in the county where the corporation’s principal~~

office (or, if none in this ~~[State, its registered office]~~ state, in the city and county of Honolulu) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with section 414D-302(b) and (c) may apply to the court in the county where the corporation's principal office (or, if none in this ~~[State, its registered office]~~ state, in the city and county of Honolulu) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis."

SECTION 29. Section 414D-308, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each domestic corporation, and each foreign corporation authorized to transact business in the ~~[State,]~~ state, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the ~~[state or country]~~ jurisdiction under whose law it is incorporated;
- (2) The mailing address of its principal office~~[-, the address of its registered office in this State, and the name of its registered agent at its registered office in the State;]~~ and the information required by section -4(a);
- (3) The names and addresses of its directors and officers; and
- (4) A brief description of the nature of its activities."

SECTION 30. Section 425-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Whenever any general partnership is formed under the laws of this ~~[State]~~ state to do business in this ~~[State,]~~ state, or any general partnership formed under the laws of any other jurisdiction shall do business in this ~~[State,]~~ state, the partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements prescribed in this chapter. A registration statement shall be filed by a partnership formed under the laws of this ~~[State]~~ state within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this ~~[State,]~~ state. Every registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) The mailing address of the partnership's principal office~~[-, the street address of the partnership's registered office in this State, and the name of its registered agent at its registered office in this State;]~~ and the information required by section -4(a); provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction shall also be specified;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this ~~[State,]~~ state; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) Every domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a) (1), (2), (3), and (5) and a listing of the names of any partner admitted, with-



drawn, or who has died during the year; provided that the information provided to satisfy the requirements of subsection (a)(3) shall ~~[indicate the]~~ be current ~~[registered office and agent]~~. A domestic or foreign partnership that has filed with the department director a statement of qualification or statement of foreign qualification to register as a limited liability partnership or foreign limited liability partnership shall file the annual report prescribed in section 425-163 in lieu of the annual statement required in this section. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d)."

SECTION 31. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director of commerce and consumer affairs upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$10;
- (3) Partnership dissolution statement, \$10;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$10;
- (6) Application for certificate of withdrawal, \$5;
- (7) Statement of correction, \$10;
- (8) Reservation of name, \$10;
- (9) Transfer of reservation of name, \$10;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$10;
- (14) Special handling fee for review of any general partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10;
- (17) Special handling fee for review of articles of conversion or merger, \$75; and
- (18) ~~[Agent's statement of change of address, \$10 for each affected domestic or foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign general partnership.]~~ For filings relating to registered agents, the fees established by section -2."

SECTION 32. Section 425-18, Hawaii Revised Statutes, is amended to read as follows:

~~[[§425-18]]~~ **Registered ~~[office and registered]~~ agent.** Each domestic partnership or foreign partnership shall continuously maintain in this ~~[State:~~

- (1) ~~A registered office that may be the same as any of its places of business; and~~
- (2) ~~A]~~ state a registered agent, who shall have a business address in this state and may be:
  - ~~[(A)]~~ (1) An individual who resides in this ~~[State and whose business office is identical with the registered office]~~ state;

- [(B)] (2) A domestic entity authorized to transact business or conduct affairs in this [State whose business office is identical with the registered office] state; or
- [(C)] (3) A foreign entity authorized to transact business or conduct affairs in this [State whose business office is identical with the registered office] state.”

SECTION 33. Section 425-19, Hawaii Revised Statutes, is amended to read as follows:

**“[§425-19] Designation or change of [registered office or] registered agent.** (a) A partnership that does not already have a [registered office and] registered agent shall designate its [registered office and] registered agent by [delivering to the director of commerce and consumer affairs for filing, a statement of designation that sets forth:

- (1) The name of the partnership;
- (2) The street address of its initial registered office in the State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.] complying with the requirements of section -4.

(b) A partnership may change its [registered office or its] registered agent by [delivering to the director of commerce and consumer affairs for filing, a statement of change that sets forth:

- (1) The name of the partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.] complying with the requirements of section -7.

(c) If the registered [agent’s street address changes, the registered agent may change the street address of the partnership’s registered office by notifying the partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director of commerce and consumer affairs for filing, a statement that complies with the requirements of subsection (a) and recites that the partnership has been notified of the change.] agent changes its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of section -8 or -9, whichever is applicable.”

SECTION 34. Section 425-20, Hawaii Revised Statutes, is amended to read as follows:

**“[§425-20] Resignation of registered agent.** [(a)] A registered agent may resign from the registered agent’s appointment by [signing and delivering to the director of commerce and consumer affairs for filing, a signed statement of resignation. The statement may include a statement that the registered office is also discontinued:

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.] complying with the requirements of section -10.”

SECTION 35. Section 425-153, Hawaii Revised Statutes, is amended to read as follows:

**"§425-153 Statement of qualification.** A statement of qualification shall contain:

- (1) The name of the partnership;
- (2) A statement that the partnership elects to be a limited liability partnership; and
- (3) The mailing address of the partnership's initial principal office~~[-the street address of the partnership's initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State.]~~ and the information required by section -4(a)."

SECTION 36. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

**"§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with the law of the state or other jurisdiction under which the foreign limited liability partnership is formed;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's principal office~~[-the street address of the partnership's registered office in this State, and the name of its registered agent at its registered office in this State.]~~ and the information required by section -4(a)."

SECTION 37. Section 425-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a)** Every limited liability partnership and foreign limited liability partnership authorized to transact business in this [State] state shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) The mailing address of the partnership's principal office~~[-the street address of the partnership's registered office in this State, and the name of its registered agent at its registered office in this State.]~~ and the information required by section -4(a); provided that if the partnership is formed under the laws of any other jurisdiction, the name of the other jurisdiction shall also be specified;
- (3) The name and address of each partner; and
- (4) The fact that none of the partners is either a minor or an incompetent person."

SECTION 38. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a)** The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership if:

- (1) The partnership fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two years;

- (C) Appoint and maintain an agent for service of process as required; or
- (D) File a statement of a change in the name or business address of the agent as required[;] by chapter       ; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The director shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation."

SECTION 39. Section 425-168, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director shall collect the following fees for the following limited liability partnership documents:

- (1) Annual report, \$25;
- (2) Statement of qualification, \$50;
- (3) Statement of foreign qualification, \$100;
- (4) Statement of correction, amendment, restatement, or amendment and restatement, \$25;
- (5) Certificate of good standing, \$5;
- (6) Articles of conversion or merger, \$100;
- (7) For any other certificate, statement, or document, \$25;
- (8) Certification of domestic or foreign partnership, \$10; and
- (9) ~~[For each agent's statement of change of registered office, \$10 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.] For filings relating to registered agents, the fees established by section -2.~~

SECTION 40. Section 425E-114, Hawaii Revised Statutes, is amended to read as follows:

~~"[§425E-114]] Registered [office and registered] agent.~~ Each domestic limited partnership or foreign limited partnership shall continuously maintain in this ~~[State:~~

- (1) ~~A registered office that may be the same as any of its places of business; and~~
- (2) ~~A] state a~~ registered agent, who shall have a business address in this state and may be:
  - ~~[(A)] (1) An individual who resides in this [State and whose business office is identical with the registered office] state;~~
  - ~~[(B)] (2) A domestic entity authorized to transact business in this [State whose business office is identical with the registered office] state; or~~
  - ~~[(C)] (3) A foreign entity authorized to transact business in this [State whose business office is identical with the registered office] state."~~

SECTION 41. Section 425E-115, Hawaii Revised Statutes, is amended to read as follows:

**“[§425E-115] Designation or change of ~~[registered office or]~~ registered agent.** (a) A domestic limited partnership or foreign limited partnership that does not already have a ~~[registered office and]~~ registered agent shall designate its ~~[registered office and]~~ registered agent by ~~[delivering to the director for filing, a statement of designation that sets forth:~~

- (1) The name of the limited partnership;
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.] complying with the requirements of section -4.

(b) A domestic or foreign limited partnership may change ~~[its registered office or]~~ its registered agent by ~~[delivering to the director for filing, a statement of change that sets forth:~~

- (1) The name of the limited partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.] complying with the requirements of section -7.

(c) If the registered ~~[agent's street address changes, the registered agent may change the street address of the limited partnership's registered office by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director for filing, a statement that complies with the requirements of subsection (a) and recites that the limited partnership has been notified of the change.]~~ agent changes its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of section -8 or -9, whichever is applicable.”

SECTION 42. Section 425E-116, Hawaii Revised Statutes, is amended to read as follows:

**“[§425E-116] Resignation of registered agent.** [(a)] A registered agent may resign from the registered agent's appointment by ~~[signing and delivering to the director for filing, a signed statement of resignation. The statement may include a statement that the registered office shall also be discontinued.~~

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the limited partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.] complying with the requirements of section -10.”

SECTION 43. Section 425E-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To form a limited partnership, a certificate of limited partnership shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;

- (2) The mailing address of the limited partnership's initial principal office~~;~~ ~~the street address of the limited partnership's initial registered office in this State, and the name of its initial registered agent at its initial registered office;~~ and the information required by section -4(a);
- (3) The name and the address of each general partner;
- (4) Whether the limited partnership is a limited liability limited partnership;
- (5) Any additional information required by article 11; and
- (6) Any other matter the general partners determine to include therein."

SECTION 44. Section 425E-208, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If a record delivered to the director for filing under this chapter contains false information, any person that suffers loss by reliance on the false information may recover damages for the loss from:

- (1) Any person who executes the record, or causes another to execute it on the person's behalf, and knew the information to be false or should have known the information was false at the time the record was executed; and
- (2) Any general partner who has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 425E-202, file a petition pursuant to section 425E-205, or deliver to the director for filing a statement of change pursuant to section ~~[425E-115]~~ -7, or a certificate of correction pursuant to section 425E-207."

SECTION 45. Section 425E-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each limited partnership and each foreign limited partnership authorized to transact business in this ~~[State]~~ state shall deliver to the director for filing an annual statement that sets forth:

- (1) The name of the limited partnership and the state or country under whose law it is formed;
- (2) The mailing address of the limited partnership's principal office~~;~~ ~~the street address of the limited partnership's registered office in this State, and the name of its registered agent at its registered office in this State;~~ and the information required by section -4(a); and
- (3) The name and address of each general partner."

SECTION 46. Section 425E-304, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Within ten days of a demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~[designated]~~ principal office. The limited partner need not have any particular purpose for seeking the information."

2. By amending subsection (d) to read:

“(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership’s ~~[designated]~~ principal office if:

- (1) The information pertains to the period during which the person was a limited partner;
- (2) The person seeks the information in good faith; and
- (3) The person meets the requirements of subsection (b).”

SECTION 47. Section 425E-407, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

- (1) In the limited partnership’s ~~[designated]~~ principal office, required information; and
- (2) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership’s activities and financial condition.”

SECTION 48. Section 425E-807, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The notice shall:

- (1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership’s principal office is located or, if it has none in this ~~[State,]~~ state, in the ~~[county in which the limited partnership’s designated office is or was last located,]~~ city and county of Honolulu;
- (2) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;
- (3) State that a claim against the limited partnership shall be barred unless an action to enforce the claim is commenced within five years after publication of the notice; and
- (4) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership shall also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 425E-404.”

SECTION 49. Section 425E-902, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited partnership may apply for a certificate of authority to transact business in this ~~[State]~~ state by delivering an application to the director for filing. The application shall state:

- (1) The name of the foreign limited partnership and, if the name does not comply with ~~[sections]~~ section 425E-108(d) and (e), an alternate name adopted pursuant to section 425E-905(a);
- (2) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (3) The mailing address of the foreign limited partnership’s principal office~~], the street address of its registered office in this State, and the name of its registered agent at its registered office in this State;]~~ and the information required by section -4(a);
- (4) The name and address of each general partner;
- (5) Whether the foreign limited partnership is a foreign limited liability limited partnership; and

- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this [State] state is canceled or withdrawn."

SECTION 50. Section 425E-906, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director may cancel the certificate of authority of a limited partnership administratively if:

- (1) The partnership fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual statement for a period of two years;
  - (C) Appoint and maintain an agent for service of process as required[;] by chapter ; or
  - (D) File a statement of a change in the name or business address of the agent as required[;] by section -7; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership."

SECTION 51. Section 425E-1109, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this [State] state or the agent for service of process cannot with reasonable diligence be [found at the designated office,] served, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed."

SECTION 52. Section 428-107, Hawaii Revised Statutes, is amended to read as follows:

**"§428-107 Registered [~~office and~~] agent.** A limited liability company and a foreign limited liability company authorized to transact business in this [State] state shall continuously maintain in this [State]:

- (1) ~~A registered office that may be the same as any of its places of business; and~~
- (2) A] state a registered agent, who shall have a business address in this state and may be:
  - [(A)] ~~(1) An individual who resides in this [State and whose business office is identical with the registered office] state;~~
  - [(B)] (2) A domestic entity authorized to transact business in this [State whose business office is identical with the registered office] state; or



- ~~[(C)]~~ (3) A foreign entity authorized to transact business in this ~~[State whose business office is identical with the registered office]~~ state."

SECTION 53. Section 428-108, Hawaii Revised Statutes, is amended to read as follows:

**"§428-108 Change of ~~[registered office or]~~ registered agent.** (a) A limited liability company or a foreign limited liability company may change its ~~[registered office or its]~~ registered agent by ~~[delivering to the director for filing a statement of change which sets forth:~~

- (1) ~~The name of the company;~~
- (2) ~~The street address of its current registered office in this State, the name of its current registered agent at its registered office in this State, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and registered agent shall be identical.]~~ complying with the requirements of section -7.

(b) If a registered agent changes its name, its address or its type or jurisdiction of organization, the agent shall comply with the requirements of section -8 or -9, whichever is applicable."

SECTION 54. Section 428-109, Hawaii Revised Statutes, is amended to read as follows:

**"§428-109 Resignation of registered agent.** [(a)] A registered agent of a domestic or foreign limited liability company may resign from the registered agent's appointment by ~~[signing and delivering to the director for filing the signed statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the company at its principal office.~~

~~(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.]~~ complying with the requirements of section -10."

SECTION 55. Section 428-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a)** Articles of organization of a limited liability company shall set forth:

- (1) The name of the company;
- (2) The mailing address of the company's initial principal office~~[-the street address of its initial registered office in this State, and the name of its initial registered agent at its registered office in this State;]~~ and the information required by section -4(a);
- (3) The name and address of each organizer;
- (4) Whether the duration of the company is for a specified term and, if so, the period specified;
- (5) Whether the company is to be manager-managed, and:
  - (A) If so, the name and address of each initial manager, and the number of initial members; or
  - (B) If not, the name and address of each initial member; and

- (6) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c)."

SECTION 56. Section 428-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each limited liability company and each foreign limited liability company authorized to transact business in this [State] state shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the ~~[state or country]~~ jurisdiction under whose law it is organized;
- (2) The mailing address of the company's principal office~~[- the street address of its registered office in this State, and the name of its registered agent at its registered office in the State;]~~ and the information required by section -4(a); and
- (3) Whether the company is manager-managed, and:
  - (A) If so, the name and address of each manager, and the number of members; or
  - (B) If not, the name and address of each member."

SECTION 57. Section 428-906, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this [State] state or the agent for service of process cannot with reasonable diligence be ~~[found at the designated office;]~~ served, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed."

SECTION 58. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign limited liability company may apply for a certificate of authority to transact business in this [State] state by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this ~~[State;]~~ state, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at its principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company's authority to transact business in this ~~[State;]~~ state;
- (4) The mailing address of its principal office~~[- the street address of its registered office in this State, and the name of its registered agent at its registered office in this State;]~~ and the information required by section -4(a);

- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is manager-managed, and:
  - (A) If so, the name and address of each manager; or
  - (B) If not, the name and address of each member;
- (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and
- (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this [State.] state."

SECTION 59. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$25;
- (3) Restated articles of organization, \$25;
- (4) Articles of merger or conversion, \$100;
- (5) Statement of dissociation, \$25;
- (6) Articles of termination, \$25;
- (7) Application for reinstatement for administratively terminated limited liability company, \$25;
- (8) Annual report, \$25;
- ~~[(9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$25;~~
- ~~[(10) Agent's statement of change of address, \$25 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;~~
- ~~[(11) (9) Any other statement or document of a domestic or foreign limited liability company, \$25;~~
- ~~[(12) (10) Application for certificate of authority for foreign limited liability company, \$100;~~
- ~~[(13) (11) Application for cancellation of authority of foreign limited liability company, \$25;~~
- ~~[(14) (12) Reservation of name, \$10;~~
- ~~[(15) (13) Good standing certificate, \$5;~~
- ~~[(16) (14) Any other record not otherwise covered in this part, \$25;~~
- ~~[(17) (15) Certified copy of any record relating to a limited liability company or foreign limited liability company, \$10 for the certificate and affixing the seal thereto;~~
- ~~[(18) (16) Special handling fee for review of any record other than articles of merger or conversion, \$25;~~
- ~~[(19) (17) Special handling fee for review of articles of merger or conversion, \$75;~~
- ~~[(20) (18) Special handling fee for certificate issued by the director not otherwise covered by this section, \$10 per certificate;~~
- ~~[(21) (19) Special handling fee for certification of record, \$10; [and]~~

- [(22)] (20) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, \$10, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action[-]; and
- (21) For filings relating to registered agents, the fees established by section -2.

SECTION 60. This Act does not affect an action or proceeding commenced or right accrued before the effective date of this Act.

SECTION 61. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 62. This Act shall take effect on July 1, 2010.

(Approved May 7, 2009.)

## ACT 56

H.B. NO. 1175

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the [State:] state:

- (1) An excise tax equal to 5.00 cents for each cigarette sold, used, or[-] possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (5) An excise tax equal to 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (6) An excise tax equal to 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

- (7) An excise tax equal to 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2008, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (8) An excise tax equal to ~~[11.00]~~ 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after ~~[September 30,]~~ July 1, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (9) An excise tax equal to ~~[12.00]~~ 14.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after ~~[September 30,]~~ July 1, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (10) An excise tax equal to ~~[13.00]~~ 15.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after ~~[September 30,]~~ July 1, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and
- (11) An excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps.”

SECTION 2. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

**“§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law; provided that, of the moneys collected under the tax imposed pursuant to:

- (1) Section 245-3(a)(5), after September 30, 2006, and prior to October 1, 2007, 1.0 cent per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
- (2) Section 245-3(a)(6), after September 30, 2007, and prior to October 1, 2008:
  - (A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (3) Section 245-3(a)(7), after September 30, 2008, and prior to ~~[October 1,]~~ July 1, 2009:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to

- section 304A-2168, for research and operating expenses and for capital expenditures;
- (B) 0.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (4) Section 245-3(a)(8), after ~~[September 30,]~~ June 30, 2009, and prior to ~~[October 1,]~~ July 1, 2010:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (5) Section 245-3(a)(9), after ~~[September 30,]~~ June 30, 2010 and prior to ~~[October 1,]~~ July 1, 2011:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 1.0 cent per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.0 cent per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 1.0 cent per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and
- (6) Section 245-3(a)(10), after ~~[September 30,]~~ June 30, 2011, and thereafter:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 1.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234.

The department shall provide an annual accounting of these dispositions to the legislature.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2009.

(Approved May 7, 2009.)

## ACT 57

S.B. NO. 521

A Bill for an Act Relating to Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to enable the counties to promptly track ownership, encumbrances, restrictions, uses, and sales prices of real property to enable more accurate real property tax assessments by requiring the registrar of the bureau of conveyances to provide, within ten days after each week and free of charge, an image and index of all instruments and documents that have been recorded in the registrar's office that week relating to regular system land in all the counties, to the county designated in a memorandum of understanding agreed upon by the counties to act as a central clearinghouse to deliver the images and index to the other counties without charge.

SECTION 2. Section 502-26, Hawaii Revised Statutes, is amended to read as follows:

**"§502-26 Copies of instruments, certificates.** (a) The registrar, when applied to, shall furnish an attested copy of any instrument or document recorded in the registrar's office, or of any fact appearing upon the registrar's records. The registrar may also issue nonattested portions of any instrument or document recorded in the registrar's office. The registrar may issue certificates of search or [~~encumbrance~~] encumbrance when personnel is available for the making of the certificate.

(b) Within ten days after the end of each week, the registrar shall deliver or forward by mail or electronic transmission, without charge, an image and index of all instruments or documents that have been recorded in the registrar's office during each week relating to land in all the counties, to the county designated to act as a central clearinghouse in a memorandum of understanding agreed upon by the counties. The central clearinghouse shall deliver the images and index to the other counties without charge. The index shall include the following for each instrument:

- (1) Document number;
- (2) Certificate number;
- (3) Date of the filing;
- (4) Type of document;
- (5) Names of grantor and grantee;
- (6) Current tax map key number; and
- (7) Location by island."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Became law on May 7, 2009, without the Governor's signature, pursuant to Art. III, §16,

ACT 58

H.B. NO. 895

A Bill for an Act Relating to Tax on Tobacco Products Other Than Cigarettes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, according to the University of Minnesota, of the estimated ten million users of smokeless tobacco, three million are under the age of twenty-one. Almost twenty-five per cent of young users start by the sixth grade, and almost seventy-five per cent start by the ninth grade. In 1970, young males ages seventeen to nineteen used smokeless tobacco the least of any age group. Today, usage by males of these ages is the highest of any age group. In America, more than three per cent of adult males, and less than one per cent of females, use smokeless tobacco. Among youth in grades nine to twelve, eight per cent use smokeless tobacco at least once a month and two to three per cent use it daily.

Chewing, or smokeless, tobacco contains over two thousand chemicals, many of which have been directly related to causing cancer, especially in the oral cavity. Studies have revealed potent carcinogens in chewing tobacco and snuff. The major carcinogens in smokeless tobacco are nitrosamines, polynuclear aromatic hydrocarbons, and radioactive and metallic compounds. The nitrosamine content of smokeless tobacco exceeds more than one thousand times the nitrosamine content allowed by the United States Food and Drug Administration in products such as beer and bacon.

Oral cancer has been shown to occur several times more frequently among individuals who use smokeless tobacco than nontobacco users, and the excess risk of cancers of the cheek and gum reaches nearly fifty-fold among long-term snuff users. Smokeless tobacco is also associated with cancers of the esophagus, larynx, and stomach and an increased risk of heart attacks and other cardiovascular diseases. About forty to sixty per cent of smokeless tobacco users exhibit leukoplakia, which is regarded as precancerous with a malignant transformation rate of two to six per cent, in the area where the quid is held, usually within a few months of beginning regular use.

Smokeless tobacco is also addictive. The nicotine in smokeless tobacco and snuff is absorbed directly into the bloodstream. An individual who uses smokeless tobacco has a similar, or even higher, level of nicotine than a smoker who smokes a pack or more a day.

The purpose of this Act is to increase deterrents against the use of tobacco products other than cigarettes, including smokeless tobacco, snuff, cigars, little cigars, and pipe tobacco.

SECTION 2. Section 245-1, Hawaii Revised Statutes, is amended by:

1. Adding a new definition to read as follows:

“‘‘Little cigar’’ means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco, with a ring gauge of less than thirty (less than .467 inches in diameter), of any length.”

2. Amending the definition of “tobacco products” to read as follows:

“‘‘Tobacco products’’ means tobacco in any form other than cigarettes or little cigars, that is prepared or intended for consumption [by,] or [the] for personal use [of,] by humans, including cigars and any substitutes thereof other



than cigarettes ~~[which]~~ that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco.”

SECTION 3. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State:

- (1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (5) An excise tax equal to 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (6) An excise tax equal to 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (7) An excise tax equal to 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2008, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (8) An excise tax equal to 11.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (9) An excise tax equal to 11.00 cents for each little cigar sold, used, or possessed by a wholesaler or dealer on and after October 1, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - [ (9) ] (10) An excise tax equal to 12.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after September 30, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - [ (10) ] (11) An excise tax equal to 13.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after September 30, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- [and]

- [14] (12) Except as provided in paragraph (13), ~~An~~ an excise tax equal to ~~forty~~ seventy per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer[;] on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer[;]; and
- (13) An excise tax equal to fifty per cent of the wholesale price of each cigar with a ring gauge of thirty or more (.467 inches in diameter or more), of any length, sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes, little cigars, or tobacco products that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps.”

SECTION 4. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

**“§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law; provided that, of the moneys collected under the tax imposed pursuant to:

- (1) Section 245-3(a)(5), after September 30, 2006, and prior to October 1, 2007, 1.0 cent per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
- (2) Section 245-3(a)(6), after September 30, 2007, and prior to October 1, 2008:
  - (A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (3) Section 245-3(a)(7), after September 30, 2008, and prior to October 1, 2009:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund[;] established pursuant to section 321-1.65; and

- (D) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (4) Section 245-3(a)(8), after September 30, 2009, and prior to October 1, 2010:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund~~[§]~~ established pursuant to section 321-1.65; and
  - (D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (5) Section 245-3(a)~~[(9)]~~ (10), after September 30, 2010, and prior to October 1, 2011:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 1.0 cent per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.0 cent per cigarette shall be deposited to the credit of the community health centers special fund~~[§]~~ established pursuant to section 321-1.65; and
  - (D) 1.0 cent per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and
- (6) Section 245-3(a)~~[(10)]~~ (11), after September 30, 2011, and thereafter:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers special fund~~[§]~~ established pursuant to section 321-1.65; and
  - (D) 1.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234.

The department shall provide an annual accounting of these dispositions to the legislature.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that the amendments made to section 245-1, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2009, pursuant to section 9 of Act 131, Session Laws of Hawaii 2005.

(Vetoed by Governor and veto overridden by Legislature on May 8, 2009.)

ACT 59

H.B. NO. 1741

A Bill for an Act Relating to the Conveyance Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to:

- (1) Temporarily reduce the distribution of portions of the conveyance tax to the rental housing trust fund and the natural area reserve fund; and
- (2) Increase the rate of the conveyance tax on transfers or conveyances of properties of \$2,000,000 or more and second house purchases.

SECTION 2. Section 173A-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) ~~[Ten per cent]~~ The appropriate percentage identified under section 247-7 of all taxes imposed and collected ~~[by section 247-1]~~ under chapter 247 shall be deposited in or credited to the fund every fiscal year.”

SECTION 3. Section 247-2, Hawaii Revised Statutes, is amended to read as follows:

“**§247-2 Basis and rate of tax.** The tax imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid for all transfers or conveyance of realty or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the following rates:

- (1) Except as provided in paragraph (2):
  - (A) Ten cents per \$100 for properties with a value of less than \$600,000;
  - (B) Twenty cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; ~~[and]~~
  - (C) Thirty cents per \$100 for properties with a value of at least \$1,000,000 ~~[or greater; and]~~ but less than \$2,000,000;
  - (D) Fifty cents per \$100 for properties with a value of at least \$2,000,000, but less than \$4,000,000;
  - (E) Seventy cents per \$100 for properties with a value of at least \$4,000,000, but less than \$6,000,000;
  - (F) Ninety cents per \$100 for properties with a value of at least \$6,000,000, but less than \$10,000,000; and
  - (G) One dollar per \$100 for properties with a value of \$10,000,000 or greater; and
- (2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax:

- (A) Fifteen cents per \$100 for properties with a value of less than \$600,000;
- (B) Twenty-five cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; ~~and~~
- (C) ~~[Thirty-five]~~ Forty cents per \$100 for properties with a value of at least \$1,000,000 ~~[or greater]~~, but less than \$2,000,000;
- (D) Sixty cents per \$100 for properties with a value of at least \$2,000,000, but less than \$4,000,000;
- (E) Eighty-five cents per \$100 for properties with a value of at least \$4,000,000, but less than \$6,000,000;
- (F) One dollar and ten cents per \$100 for properties with a value of at least \$6,000,000, but less than \$10,000,000; and
- (G) One dollar and twenty-five cents per \$100 for properties with a value of \$10,000,000 or greater.

of such actual and full consideration; provided that in the case of a lease or sublease, this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, that shall include on-site as well as off-site improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than \$1."

SECTION 4. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

**"§247-7 Disposition of taxes.** All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

- (1) Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;
- (2) ~~[Thirty]~~ Twenty-five per cent from July 1, 2009, until June 30, 2012, and thirty per cent in each fiscal year thereafter shall be paid into the rental housing trust fund established by section 201H-202; and
- (3) ~~[Twenty-five]~~ Twenty per cent from July 1, 2009, until June 30, 2012, and twenty-five per cent in each fiscal year thereafter shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources in the following priority:
  - (A) To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
  - (B) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
  - (C) The youth conservation corps established under chapter 193."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on May 8, 2009.)

ACT 60

H.B. NO. 1747

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) [~~\$4,000~~] \$4,400 in the case of:
  - (A) A joint return as provided by section 235-93; or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) [~~\$2,920~~] \$3,212 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) [~~\$2,000~~] \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) [~~\$2,000~~] \$2,200 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.”

SECTION 2. Section 235-51, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) There is hereby imposed on the taxable income of (1) every taxpayer who files a joint return under section 235-93; and (2) every surviving spouse a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.40% of taxable income
Over \$4,000 but not over \$8,000	\$56.00 plus 3.20% of excess over \$4,000
Over \$8,000 but not over \$16,000	\$184.00 plus 5.50% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$624.00 plus 6.40% of excess over \$16,000
Over \$24,000 but not over \$32,000	\$1,136.00 plus 6.80% of excess over \$24,000

Over \$32,000 but not over \$40,000	\$1,680.00 plus 7.20% of excess over \$32,000
Over \$40,000 but not over \$60,000	\$2,256.00 plus 7.60% of excess over \$40,000
Over \$60,000 but not over \$80,000	\$3,776.00 plus 7.90% of excess over \$60,000
Over \$80,000	\$5,356.00 plus 8.25% of excess over \$80,000.

In the case of any taxable year beginning after December 31, 2006:

If the taxable income is:	The tax shall be:
Not over \$4,800	1.40% of taxable income
Over \$4,800 but not over \$9,600	\$67.00 plus 3.20% of excess over \$4,800
Over \$9,600 but not over \$19,200	\$221.00 plus 5.50% of excess over \$9,600
Over \$19,200 but not over \$28,800	\$749.00 plus 6.40% of excess over \$19,200
Over \$28,800 but not over \$38,400	\$1,363.00 plus 6.80% of excess over \$28,800
Over \$38,400 but not over \$48,000	\$2,016.00 plus 7.20% of excess over \$38,400
Over \$48,000 but not over \$72,000	\$2,707.00 plus 7.60% of excess over \$48,000
Over \$72,000 but not over \$96,000	\$4,531.00 plus 7.90% of excess over \$72,000
Over \$96,000	\$6,427.00 plus 8.25% of excess over \$96,000.

In the case of any taxable year beginning after December 31, 2008:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$4,800</u>	<u>1.40% of taxable income</u>
<u>Over \$4,800 but not over \$9,600</u>	<u>\$67.00 plus 3.20% of excess over \$4,800</u>
<u>Over \$9,600 but not over \$19,200</u>	<u>\$221.00 plus 5.50% of excess over \$9,600</u>
<u>Over \$19,200 but not over \$28,800</u>	<u>\$749.00 plus 6.40% of excess over \$19,200</u>
<u>Over \$28,800 but not over \$38,400</u>	<u>\$1,363.00 plus 6.80% of excess over \$28,800</u>
<u>Over \$38,400 but not over \$48,000</u>	<u>\$2,016.00 plus 7.20% of excess over \$38,400</u>
<u>Over \$48,000 but not over \$72,000</u>	<u>\$2,707.00 plus 7.60% of excess over \$48,000</u>
<u>Over \$72,000 but not over \$96,000</u>	<u>\$4,531.00 plus 7.90% of excess over \$72,000</u>
<u>Over \$96,000 but not over \$300,000</u>	<u>\$6,427.00 plus 8.25% of excess over \$96,000</u>
<u>Over \$300,000 but not over \$350,000</u>	<u>\$23,257.00 plus 9.00% of excess over \$300,000</u>
<u>Over \$350,000 but not over \$400,000</u>	<u>\$27,757.00 plus 10.00% of excess over \$350,000</u>
<u>Over \$400,000</u>	<u>\$32,757.00 plus 11.00% of excess over \$400,000.</u>

(b) There is hereby imposed on the taxable income of every head of a household a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$3,000	1.40% of taxable income
Over \$3,000 but not over \$6,000	\$42.00 plus 3.20% of excess over \$3,000
Over \$6,000 but not over \$12,000	\$138.00 plus 5.50% of excess over \$6,000
Over \$12,000 but not over \$18,000	\$468.00 plus 6.40% of excess over \$12,000
Over \$18,000 but not over \$24,000	\$852.00 plus 6.80% of excess over \$18,000
Over \$24,000 but not over \$30,000	\$1,260.00 plus 7.20% of excess over \$24,000
Over \$30,000 but not over \$45,000	\$1,692.00 plus 7.60% of excess over \$30,000
Over \$45,000 but not over \$60,000	\$2,832.00 plus 7.90% of excess over \$45,000
Over \$60,000	\$4,017.00 plus 8.25% of excess over \$60,000.

In the case of any taxable year beginning after December 31, 2006:

If the taxable income is:	The tax shall be:
Not over \$3,600	1.40% of taxable income
Over \$3,600 but not over \$7,200	\$50.00 plus 3.20% of excess over \$3,600
Over \$7,200 but not over \$14,400	\$166.00 plus 5.50% of excess over \$7,200
Over \$14,400 but not over \$21,600	\$562.00 plus 6.40% of excess over \$14,400
Over \$21,600 but not over \$28,800	\$1,022.00 plus 6.80% of excess over \$21,600
Over \$28,800 but not over \$36,000	\$1,512.00 plus 7.20% of excess over \$28,800
Over \$36,000 but not over \$54,000	\$2,030.00 plus 7.60% of excess over \$36,000
Over \$54,000 but not over \$72,000	\$3,398.00 plus 7.90% of excess over \$54,000
Over \$72,000	\$4,820.00 plus 8.25% of excess over \$72,000.

In the case of any taxable year beginning after December 31, 2008:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$3,600</u>	<u>1.40% of taxable income</u>
<u>Over \$3,600 but not over \$7,200</u>	<u>\$50.00 plus 3.20% of excess over \$3,600</u>
<u>Over \$7,200 but not over \$14,400</u>	<u>\$166.00 plus 5.50% of excess over \$7,200</u>
<u>Over \$14,400 but not over \$21,600</u>	<u>\$562.00 plus 6.40% of excess over \$14,400</u>
<u>Over \$21,600 but not over \$28,800</u>	<u>\$1,022.00 plus 6.80% of excess over \$21,600</u>
<u>Over \$28,800 but</u>	<u>\$1,512.00 plus 7.20% of</u>



<u>not over \$36,000</u>	<u>excess over \$28,800</u>
<u>Over \$36,000 but</u>	<u>\$2,030.00 plus 7.60% of</u>
<u>not over \$54,000</u>	<u>excess over \$36,000</u>
<u>Over \$54,000 but</u>	<u>\$3,398.00 plus 7.90% of</u>
<u>not over \$72,000</u>	<u>excess over \$54,000</u>
<u>Over \$72,000 but</u>	<u>\$4,820.00 plus 8.25% of</u>
<u>not over \$225,000</u>	<u>excess over \$72,000</u>
<u>Over \$225,000 but</u>	<u>\$17,443.00 plus 9.00% of</u>
<u>not over \$262,500</u>	<u>excess over \$225,000</u>
<u>Over \$262,500 but</u>	<u>\$20,818.00 plus 10.00% of</u>
<u>not over \$300,000</u>	<u>excess over \$262,500</u>
<u>Over \$300,000</u>	<u>\$24,568.00 plus 11.00% of</u>
	<u>excess over \$300,000.</u>

(c) There is hereby imposed on the taxable income of (1) every unmarried individual (other than a surviving spouse, or the head of a household) and (2) on the taxable income of every married individual who does not make a single return jointly with the individual's spouse under section 235-93 a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.40% of taxable income
Over \$2,000 but	\$28.00 plus 3.20% of
not over \$4,000	excess over \$2,000
Over \$4,000 but	\$92.00 plus 5.50% of
not over \$8,000	excess over \$4,000
Over \$8,000 but	\$312.00 plus 6.40% of
not over \$12,000	excess over \$8,000
Over \$12,000 but	\$568.00 plus 6.80% of
not over \$16,000	excess over \$12,000
Over \$16,000 but	\$840.00 plus 7.20% of
not over \$20,000	excess over \$16,000
Over \$20,000 but	\$1,128.00 plus 7.60% of
not over \$30,000	excess over \$20,000
Over \$30,000 but	\$1,888.00 plus 7.90% of
not over \$40,000	excess over \$30,000
Over \$40,000	\$2,678.00 plus 8.25% of
	excess over \$40,000.

In the case of any taxable year beginning after December 31, 2006:

If the taxable income is:	The tax shall be:
Not over \$2,400	1.40% of taxable income
Over \$2,400 but	\$34.00 plus 3.20% of
not over \$4,800	excess over \$2,400
Over \$4,800 but	\$110.00 plus 5.50% of
not over \$9,600	excess over \$4,800
Over \$9,600 but	\$374.00 plus 6.40% of
not over \$14,400	excess over \$9,600
Over \$14,400 but	\$682.00 plus 6.80% of
not over \$19,200	excess over \$14,400
Over \$19,200 but	\$1,008.00 plus 7.20% of
not over \$24,000	excess over \$19,200
Over \$24,000 but	\$1,354.00 plus 7.60% of
not over \$36,000	excess over \$24,000
Over \$36,000 but	\$2,266.00 plus 7.90% of

not over \$48,000  
Over \$48,000

excess over \$36,000  
\$3,214.00 plus 8.25% of  
excess over \$48,000.

In the case of any taxable year beginning after December 31, 2008:

If the taxable income is:

The tax shall be:

Not over \$2,400

1.40% of taxable income

Over \$2,400 but

\$34.00 plus 3.20% of

not over \$4,800

excess over \$2,400

Over \$4,800 but

\$110.00 plus 5.50% of

not over \$9,600

excess over \$4,800

Over \$9,600 but

\$374.00 plus 6.40% of

not over \$14,400

excess over \$9,600

Over \$14,400 but

\$682.00 plus 6.80% of

not over \$19,200

excess over \$14,400

Over \$19,200 but

\$1,008.00 plus 7.20% of

not over \$24,000

excess over \$19,200

Over \$24,000 but

\$1,354.00 plus 7.60% of

not over \$36,000

excess over \$24,000

Over \$36,000 but

\$2,266.00 plus 7.90% of

not over \$48,000

excess over \$36,000

Over \$48,000 but

\$3,214.00 plus 8.25% of

not over \$150,000

excess over \$48,000

Over \$150,000 but

\$11,629.00 plus 9.00% of

not over \$175,000

excess over \$150,000

Over \$175,000 but

\$13,879.00 plus 10.00% of

not over \$200,000

excess over \$175,000

Over \$200,000

\$16,379.00 plus 11.00% of

excess over \$200,000."

SECTION 3. Section 235-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by ~~[\$1,040,]~~ \$1,144, for taxable years beginning after December 31, 1984. A nonresident shall prorate the personal exemptions on account of income from sources outside the State as provided in section 235-5. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero."

SECTION 4. Notwithstanding any other law to the contrary, no penalty or interest under Title 14, Hawaii Revised Statutes, shall be imposed because of any underpayment of tax by a taxpayer or an employer attributable to the increase in the tax rates under this measure until the later of:

- (1) Ninety days after this Act becomes law; or
- (2) Immediately, after this Act becomes law, when the taxpayer's estimated tax payment is due.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon approval, provided that:

- (1) Section 2 shall apply to taxable years beginning after December 31, 2008;
- (2) Sections 1 and 3 shall apply to taxable years beginning after December 31, 2010; and
- (3) On December 31, 2015, this Act shall be repealed and sections 235-2.4(a), 235-51(a), (b), and (c), and 235-54(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Vetoed by Governor and veto overridden by Legislature on May 8, 2009.)

## ACT 61

S.B. NO. 1111

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 237D-2, Hawaii Revised Statutes, is amended to read as follows:

**“§237D-2 Imposition and rates.** (a) There is levied and shall be assessed and collected each month a tax of:

- (1) Five per cent for the period beginning on January 1, 1987, to June 30, 1994;
- (2) Six per cent for the period beginning July 1, 1994, to December 31, 1998; and
- (3) 7.25 per cent for the period beginning on January 1, 1999, and thereafter;

on the gross rental or gross rental proceeds derived from furnishing transient accommodations.

(b) There is levied and shall be assessed and collected each month an additional:

- (1) One per cent for the period beginning July 1, 2009, to June 30, 2010; and
- (2) Two per cent for the period beginning July 1, 2010, to June 30, 2015;

on the gross rental or gross rental proceeds derived from furnishing transient accommodations. The rate levied and assessed under this subsection shall be additional to the rate levied and assessed under section 237D-2(a)(3).

~~[(b)]~~ (c) Every operator shall pay to the State the tax imposed by [subsection] subsections (a) and (b) as provided in this chapter.

~~[(e)]~~ (d) There is levied and shall be assessed and collected each month, on the occupant of a resort time share vacation unit, a transient accommodations tax of 7.25 per cent on the fair market rental value.

~~[(d)]~~ (e) Every plan manager shall be liable for and pay to the State the transient accommodations tax imposed by subsection ~~[(e)]~~ (d) as provided in this chapter. Every resort time share vacation plan shall be represented by a plan manager who shall be subject to this chapter.”

SECTION 2. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter, except for revenues collected under section 237D-2(b), shall be distributed as follows, with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$33,000,000 in any calendar year, revenues collected in excess of \$33,000,000 shall be deposited into the general fund;
- (2) 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11 for tourism promotion and visitor industry research; provided that beginning on July 1, 2002, of the first \$1,000,000 in revenues deposited:
  - (A) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
  - (B) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;
 provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; provided further that of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency trust fund; and
- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent.

Revenues collected under section 237D-2(b) shall be deposited into the general fund. All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2015; provided that sections 237D-2 and 237D-6.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2009.

(Vetoed by Governor and veto overridden by Legislature on May 8, 2009.)

## ACT 62

H.B. NO. 1101

A Bill for an Act Relating to Investigators of the Department of Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that for the State to comply with the settlement agreement between the State and the United States Department of Justice concerning conditions at the Hawaii youth correctional facilities, the State must be able to investigate incidents of use of force, staff-on-youth violence, serious youth-on-youth violence, inappropriate staff relationships with youth, sexual misconduct between youth, and abusive institutional practices at the Hawaii youth correctional facilities. Although pursuant to section 346-4.5, Hawaii Revised Statutes, the director of human services has broad authority to appoint and commission investigators and those investigators are authorized to access information maintained by any state or county entity, the statute does not state specifically that investigators have the authority to access information necessary to investigate incidents at the Hawaii youth correctional facilities.

The purpose of this Act is to ensure that investigators appointed and commissioned by the director of human services have access to all information necessary to investigate incidents at the Hawaii youth correctional facilities.

SECTION 2. Section 346-4.5, Hawaii Revised Statutes, is amended to read as follows:

**“§346-4.5 Investigators; authority and access to records.** (a) The director shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all the powers and authority of a police officer or of a deputy sheriff, provided that the persons so appointed and commissioned shall not carry any firearms.

(b) Information necessary to investigate fraud and other crimes relating to public assistance, to locate absent parents, to establish paternity, [and] to obtain and enforce court orders of support, and to investigate incidents at the Hawaii youth correctional facilities, and contained within the records of any agency, board, commission, authority, or committee of the State or its political subdivisions shall be made available to any commissioned investigator of the department of human services, notwithstanding any provision for confidentiality.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved May 18, 2009.)

## ACT 63

H.B. NO. 179

A Bill for an Act Relating to School Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to repeal two subsections of the Hawaii Revised Statutes regarding the cost of electricity and maintenance for air

conditioners not installed by the department of accounting and general services and repair and maintenance for donated fixtures and equipment.

SECTION 2. Section 302A-1501, Hawaii Revised Statutes, is amended to read as follows:

**“[H§302A-1501] Noise and climate control at school facilities.** [(a)] The department shall plan for, and request appropriations necessary to implement, acoustic noise control and air conditioning of existing and new school facilities in areas that are susceptible to extremes of temperature or affected by aircraft, traffic, and other noise. The department shall develop appropriate standards and consider local conditions for deciding whether acoustic noise control and air conditioning of existing and new school facilities are required for effective classroom instruction. In all cases where acoustic treatment of school facilities is planned, the department shall utilize the services of individuals qualified by training and experience to recommend appropriate noise control procedures and components. Acoustic noise control and air conditioning shall be given equal weight as all other factors in the criteria used by the department in setting priorities for school construction and renovations.

[(b) In any case where air conditioners are installed in a particular school, the department may require that the approximate cost of electricity and maintenance for air conditioners not installed by the department of accounting and general services be paid by a private entity until the department establishes temperature and noise standards and a policy relating to air conditioning.]”

SECTION 3. Section 302A-1503, Hawaii Revised Statutes, is amended to read as follows:

**“[H§302A-1503] Donated school equipment and fixtures; repair and maintenance responsibility.** (a) The department may accept donations of school equipment or fixtures on behalf of the department, individual schools, or school complexes. Donations that meet current educational specifications or exceed existing educational specifications shall be deemed acceptable in instances where the donations enhance the school environment or improve the administration of school programs in accordance with criteria established by the department pursuant to chapter 91.

[(b) In the case of fixtures that are to be installed in existing or new school facilities, the department of accounting and general services shall thereafter be responsible for the repair and maintenance of the donated fixtures. In the case of equipment that supports the school's curriculum and programs, the department of education shall thereafter be responsible for the repair and maintenance of the donated equipment.]

[(e)] (b) The department may accept a donation only if the equipment or fixture is useful to enhance the physical environment or safety of a school, or is a benefit to learning.

[(d)] (c) The private source making a donation shall not be liable upon any claim for injury arising from the donated equipment or fixture; provided that this provision shall not affect the responsibility or liability of manufacturers of defective products nor shall it [reflect] affect the responsibilities of negligent persons who cause dangerous conditions that result in injury.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

(Approved May 18, 2009.)

## ACT 64

H.B. NO. 1016

A Bill for an Act Making Appropriations for Claims Against the State, its Officers, or its Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2008-2009 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:	
Starr v. State of Hawaii, et al. Civil No. 05-00665, USDC	\$ 75,000.00
SUBTOTAL:	\$ 75,000.00
2. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS:	
Amarino, et al. v. Diego Mortuary, Inc., et al., Civil No. 04-1-1582-08, First Circuit	\$142,592.80 <u>Settlement</u>
SUBTOTAL:	\$142,592.80
3. DEPARTMENT OF EDUCATION:	
Hoshijo v. State of Hawaii, et al. HCRC No. 12617, EEOC No. 37B-A4-00211	\$ 35,000.00 Settlement
Romero v. State of Hawaii, et al. Civil No. 05-1-2112-11, First Circuit	\$ 20,000.00 Settlement
Wiley, et al. v. State of Hawaii, et al. Civil No. 04-1-1895-10, First Circuit	\$175,000.00 Settlement
Tort claim of Dominic Quimbao	<u>\$ 20,000.00</u>
SUBTOTAL:	\$250,000.00
4. DEPARTMENT OF HUMAN SERVICES:	
Martinez v. State of Hawaii, et al. Civil No. 06-1-1658-09, First Circuit	\$ 35,000.00 Settlement
Morris v. Kihara, et al. Civil No. 06-1-0063, Fifth Circuit	\$ 39,617.28 <u>Settlement</u>
SUBTOTAL:	\$ 74,617.28
5. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Wiltz v. State of Hawaii, et al. Civil No. 08-1-0806, Fifth Circuit	\$ 25,000.00 <u>Settlement</u>
SUBTOTAL:	\$ 25,000.00

6.	DEPARTMENT OF PUBLIC SAFETY:	
	Ayala v. State of Hawaii, et al.	\$ 50,000.00
	Civil No. 06-1-0142-01, First Circuit	Settlement
	Becker v. State of Hawaii, et al.	\$ 50,000.00
	Civil No. 05-1-1485-08, First Circuit	Settlement
	Botelho, et al. v. State of Hawaii, et al.	\$ 20,537.07
	Civil No. 06-00096DAE-BMK, USDC	Judgment
	Hernandez v. State of Hawaii, et al.	\$ 22,000.00
	Civil No. 06-1-1628-09, First Circuit	Settlement
	Herbert v. State of Hawaii, et al.	\$153,936.88
	Civil No. 06-1-0818-05, First Circuit,	Judgment
	Appeal No. 28701, Intermediate Court of Appeals	
	Howard v. Kamita, et al.	\$105,000.00
	Civil No. 03-1-2513-12, First Circuit	Settlement
	Rosa v. State of Hawaii	\$ 23,685.05
	Civil No. 07-1-1143-06, First Circuit	Judgment
	Amount of judgment:	\$22,675.00
	4% interest from 6/19/08:	\$ 1,010.05
	SUBTOTAL	\$425,159.00
7.	DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION:	
	Freitas, et al. v. State of Hawaii	\$ 60,000.00
	Civil No. 05-1-0514(1), Second Circuit	Settlement
	SUBTOTAL:	\$ 60,000.00
8.	MISCELLANEOUS CLAIMS:	
	Ejima, Inc.	\$ 587.75
	Gladys Hayashi	\$ 223.43
	Kay Y. Kawatani	\$ 107.40
	Georgia K. Char Lyman as Personal	\$ 9,114.42
	Representative of the Estate of Keakealani L. Char	
	Lottie L. Mar	\$ 22,895.25
	Elaine Mock	\$ 353.62
	Eleanor K. Ohnaga	\$ 450.00
	Karen M. Radius	\$ 1,853.15
	Paul T. Sakuma	\$ 271.58
	Mary K. Teixeira	\$ 871.18
	SUBTOTAL:	\$ 36,727.78
	TOTAL (SECTION 1):	\$1,089,096.86

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

## PART II

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,500,000 or so much thereof as may be necessary for fiscal year 2009-2010, to reimburse the compliance resolution fund of the department of commerce and consumer affairs pursuant to Hawaii Insurers Council v. Lingle, No. 27840, 2008 WL 5255926 (Hawaii December 18, 2008).



**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENT OF CLAIMS:**

**AMOUNT**

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS:**

Hawaii Insurers Council v. Lingle, et al.	\$ 3,500,000.00
Civil No. 02-1-2295-09	Judgment
First Circuit, S.Ct. No. 27840	
<b>SUBTOTAL</b>	<b>\$ 3,500,000.00</b>
<b>TOTAL (SECTION 2)</b>	<b>\$ 3,500,000.00</b>

The sum appropriated shall be expended by the department of budget and finance.

**PART III**

**SECTION 3.** The following sums or so much thereof as may be necessary for fiscal year 2008-2009 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**AMOUNT**

**DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:**

Cuson v. Department of Transportation	\$ 230,000.00
Civil No. 06-1-1855-10, First Circuit	Settlement
Kim, et al. v. Rebujo, et al.	\$ 1,850,000.00
Civil No. 06-1-1771-10 and 07-1-1676-09	Settlement
First Circuit	
Lang v. Prosniewski, et al.	\$ 325,000.00
Civil No. 05-1-0389(1), Second Circuit	Settlement
Parel v. Kanui, et al.	\$ 25,000.00
Civil No. 07-1-0290, Third Circuit	Settlement
Punsalan, et al. v. State of Hawaii, et al.	\$ 350,000.00
Civil No. 05-01-129K, Third Circuit	Settlement
Roberson v. State of Hawaii	\$ 91,000.00
Civil No. 06-1-0248(1), Second Circuit	<u>Settlement</u>
<b>SUBTOTAL:</b>	<b>\$ 2,871,000.00</b>
<b>TOTAL (SECTION 3):</b>	<b>\$ 2,871,000.00</b>

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

**SECTION 4.** The following sums or so much thereof as may be necessary for fiscal year 2008-2009 are appropriated out of the state harbor fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**AMOUNT**

**DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION:**

Haole v. State of Hawaii	\$275,000.00
Civil No. 03-1-0876-04, First Circuit	<u>Settlement</u>
<b>SUBTOTAL:</b>	\$275,000.00
<b>TOTAL (SECTION 4)</b>	\$275,000.00

The sums appropriated shall be expended by the department of transportation, harbors division, for the purposes of this Act.

**PART IV**

**SECTION 5.** The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments must obtain the approval of the attorney general before payment of any claim can be made.

**SECTION 6.** Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

**SECTION 7.** All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2010, shall lapse.

**SECTION 8.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 9.** This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2009.

(Approved May 18, 2009.)

**ACT 65**

**H.B. NO. 381**

**A Bill for an Act Relating to the State of Hawaii Endowment Fund.**

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Act 97, Session Laws of Hawaii 2006, section 2, as amended by Act 156, Session Laws of Hawaii 2007, section 1, is amended to read as follows:

“**SECTION 2.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to be deposited into the State of Hawaii endowment fund, from which the income and capital gains shall be used for the production

of music by an Oahu-based symphony orchestra; provided that the funds appropriated in this section are matched, dollar-for-dollar, by private funds or pledges pursuant to section 40-88, Hawaii Revised Statutes[~~Any unexpended or unencumbered balances from the appropriation shall lapse on June 30, 2009-]; provided further that all pledges or portions of pledges not collected by February 28, 2013, shall cause any unexpended or unencumbered balance from the appropriation to revert to the general fund.~~

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2009.

(Approved May 20, 2009.)

## ACT 66

S.B. NO. 34

A Bill for an Act Relating to the Mortgage Rescue Fraud Prevention Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

**"§467-14 Revocation, suspension, and fine.** In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee's services from both of the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's em-

- ployer or the real estate broker with whom the real estate salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others ~~[which]~~ that may be in the possession or under the control of the licensee;
  - (8) Any other conduct constituting fraudulent or dishonest dealings;
  - (9) When the licensee, being a partnership, permits any member of the partnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson ~~[therefore;]~~ therefor;
  - (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson ~~[therefore;]~~ therefor;
  - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
  - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the real estate broker represents;
  - (13) Violating this chapter; chapter 484, 514A, 514B, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;
  - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:
    - (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
    - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; or
    - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of a transient vacation rental; provided that for purposes of this paragraph "travel agency" means any person ~~[, which]~~ that, for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
  - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
  - (16) Converting other people's moneys to the licensee's own use;
  - (17) The licensee is adjudicated insane or incompetent;
  - (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or

AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;

- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee; ~~or~~
- (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing~~[-]; or~~
- (21) Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated.

As used in this section, "distressed property" has the same meaning as set forth in section 480E-2.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee's own behalf."

SECTION 2. Section 480E-2, Hawaii Revised Statutes, is amended by amending the definition of "distressed property consultant" to read as follows:

"Distressed property consultant" means any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a distressed property:

- (1) Stop or postpone the foreclosure sale or loss of any distressed property due to the nonpayment of any loan that is secured by the distressed property;
- (2) Stop or postpone the charging of any lien or encumbrance against any distressed property or eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (4) Assist the owner to exercise any cure of default arising under Hawaii law;
- (5) Obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
- (8) Avoid or ameliorate the impairment of the owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (9) Save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

"Distressed property consultant" shall not include any of the following:

- (1) A person or the person's authorized agent acting under the express authority or written approval of the federal Department of Housing and Urban Development;
- (2) A person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express au-

thorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;

- (3) Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state, or under the laws of the United States;
- (4) Licensed attorneys engaged in the practice of law;
- (5) A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities; [or]
- (6) A nonprofit organization that, pursuant to chapter 446, offers counseling or advice to an owner of a distressed property, if the nonprofit organization has no contract or agreement for services with lenders, distressed property purchasers, or any person who effects loans or distressed property purchases[-]; or
- (7) A person currently licensed as an active real estate broker or real estate salesperson in Hawaii pursuant to chapter 467, when acting in the capacity of a real estate broker or real estate salesperson in accordance with customary industry standards."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 20, 2009.)

## ACT 67

H.B. NO. 1364

A Bill for an Act Relating to the Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii Constitution.

SECTION 2. The purpose of this part is to amend Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, to:

- (1) Appropriate federal funds to various programs that are expected to receive funding during fiscal year 2008-2009 under the federal American Recovery and Reinvestment Act of 2009, P. L. 111-5 (Recovery Act), to promote openness and transparency in use of the funds for fiscal year 2008-2009;
- (2) Correspondingly reduce general fund appropriations for certain programs that receive offsetting federal funding for fiscal year 2008-2009 under the Recovery Act to address the general fund revenue shortfall for fiscal year 2008-2009;

- (3) Appropriate additional federal Temporary Assistance for Needy Families funds for fiscal year 2008-2009 that the State recently qualified for under the federal Deficit Reduction Act of 2005 as required by federal regulations;
- (4) Appropriate emergency and budget reserve funds for fiscal year 2008-2009 to the adult mental health - outpatient program (HTH 420) to meet program requirements; and
- (5) Appropriate emergency and budget reserve funds for fiscal year 2008-2009 to the Hawaii health systems corporation program (HTH 210) to meet program requirements.

Many unprecedented events have converged to create an economic, financial, and fiscal environment that threatens the very foundation of our national economy. For state governments, the financial crisis and economic downturn have adversely affected tax revenues and budgets. The impact on Hawaii has been a severe reduction in projected general fund revenues for fiscal year 2008-2009 through fiscal biennium 2009-2011 by \$2.1 billion over the period of one year. Based on the council on revenues' March 2009 projections, the State is faced with a general fund revenue shortfall of \$430,500,000 in fiscal year 2008-2009 if corrective action is not taken.

The Recovery Act was enacted to provide a necessary boost to the United States economy and to help struggling states in these difficult times. Two provisions, in particular, directly help states by making available federal funding that can be used as replacement for state general revenues for education and medicaid.

Title V, State Fiscal Relief, of the Recovery Act temporarily increases the federal medical assistance percentage that permits states to reduce their share of medicaid costs. Preliminary calculations under the new, temporary Title V federal medical assistance percentage formula indicate that Hawaii would receive an additional \$315,800,000 in federal funds over the period from fiscal year 2008-2009 through 2010-2011. In fiscal year 2008-2009, the increased federal medical assistance percentage funding would amount to \$106,800,000, which can be used to offset fiscal year 2008-2009 general fund appropriations of:

- (1) The health care payments program (HMS 401) of the department of human services;
- (2) The developmental disabilities program (HTH 501) and child and adolescent mental health program (HTH 460) of the department of health; and
- (3) The comprehensive student support services program (EDN 150) of the department of education.

The Recovery Act also temporarily increases federal support to states for:

- (1) Energy initiatives through allocations in the strategic industries program (BED 120) of the department of business, economic development, and tourism for state energy programs and energy efficiency and conservation block grants;
- (2) Water systems development through allocations in the agricultural resource management program (AGR 141) of the department of agriculture for capital improvements;
- (3) Unemployment insurance through increased allocations in the unemployment insurance program (LBR 171) of the department of labor and industrial relations for increased unemployment insurance benefit payments;
- (4) Vocational rehabilitation through increased allocations in the vocational rehabilitation program (HMS 802) of the department of

- human services for vocational rehabilitation and independent living programs;
- (5) Transportation through increased allocations in:
    - (A) The Hawaii highways program (TRN 511) and Kauai highways program (TRN 561) of the department of transportation for highway special maintenance;
    - (B) The Oahu highways program (TRN 501) and highways administration program (TRN 595) of the department of transportation for capital improvements; and
    - (C) The Honolulu international airport program (TRN 102), Kahului airport program (TRN 131), and airports administration program (TRN 195) of the department of transportation for capital improvements;
  - (6) Social services through increased allocations in:
    - (A) The general support for child care program (HMS 302);
    - (B) The child protective services payments program (HMS 303);
    - (C) The cash support for child care program (HMS 305); and
    - (D) The general support for self sufficiency services program (HMS 903),

of the department of human services for payments to eligible clients and associated program expenditures;
  - (7) Public housing through increased allocations in:
    - (A) The rental housing services program (HMS 220) of the department of human services for public housing capital improvements; and
    - (B) The homeless services program (HMS 224) of the department of human services for non-routine repairs and maintenance of the public housing inventory and homeless prevention initiatives;
  - (8) Native Hawaiian homesteads through allocations in the planning and development for the Hawaiian homesteads program (HHL 602) of the department of Hawaiian home lands for capital improvements;
  - (9) Support for elders through increased allocations in the executive office on aging (HTH 904) for congregate meals and home-delivered meals; and
  - (10) Education through increased allocations in:
    - (A) The comprehensive student support services program (EDN 150) of the department of education for No Child Left Behind Title I grants, Individuals with Disabilities Education Act part B grants, Individuals with Disabilities Education Act part B preschool grants; and
    - (B) The school support program (EDN 400) of the department of education for the National School Lunch program.

The federal Deficit Reduction Act of 2005 authorizes an enhanced level of federal Temporary Assistance for Needy Families funding if a state qualifies as a "needy state" in terms of high food stamp case loads. Hawaii recently qualified as a "needy state" and is eligible to receive enhanced federal funding for fiscal year 2008-2009. However, federal regulations require that the State appropriate the Temporary Assistance for Needy Families funds before they can be used.

The increased federal medical assistance percentage funding for Medicaid correspondingly reduces general fund costs, thereby freeing up some general funds in fiscal year 2008-2009 for use to address increased program requirements in the adult mental health - outpatient program (HTH 420) and the Hawaii



health systems corporation program (HTH 210). Both of these programs provide critical health services to the public and are experiencing difficult challenges in meeting program requirements with their present level of funding.

The immediate passage of this Act is necessary to:

- (1) Promote openness and transparency in the use of Recovery Act funds for fiscal year 2008-2009;
- (2) Address the general fund revenue shortfall for fiscal year 2008-2009;
- (3) Authorize Temporary Assistance for Needy Families funds for fiscal year 2008-2009 as required by federal regulations; and
- (4) Meet fiscal year 2008-2009 program requirements of the adult mental health - outpatient program and the Hawaii health systems corporation program.

SECTION 3. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending the definition of "means of financing" in section 2 to read as follows:

"Means of financing" (or "MOF") means the source from which funds are appropriated or authorized to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

- A general funds
- B special funds
- C general obligation bond fund
- D general obligation bond fund with debt service cost to be paid from special funds
- E revenue bond funds
- J federal aid interstate funds
- K federal aid primary funds
- L federal aid secondary funds
- M federal aid urban funds
- N other federal funds
- R private contributions
- S county funds
- T trust funds
- U interdepartmental transfers
- V federal stimulus funds
- W revolving funds
- X other funds"

SECTION 4. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items A.13 and A.18 in section 3 to read as follows:

**A. ECONOMIC DEVELOPMENT**

"13. AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

		2.00*	2.00*
OPERATING	AGR	573,157 A	573,157 A
		6.00*	8.00*
	AGR	3,717,780 B	853,942 B
		13.00*	13.00*
	AGR	1,417,472 W	1,417,472 W
INVESTMENT CAPITAL	AGR	18,400,000 C	1,500,000 C
	AGR	1,500,000 N	1,500,000 N
	<u>AGR</u>	<u>V</u>	<u>2,350,000 V</u>

**ACT 67****18. BED120 - STRATEGIC INDUSTRIES**

OPERATING		9.00 *	9.00 *
	BED	1,143,447 A	1,273,579 A
	BED	4,263,395 N	4,263,397 N
	BED	U	100,000 U
	<u>BED</u>	<u>V</u>	<u>6,090,000 V</u>

SECTION 5. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items B.3 and B.6 in section 3 to read as follows:

**B. EMPLOYMENT****"3. LBR171 - UNEMPLOYMENT INSURANCE PROGRAM**

OPERATING	LBR	166,626,650 B	166,626,650 B
		207.50 *	207.50 *
	LBR	14,799,675 N	14,799,675 N
	<u>LBR</u>	<u>V</u>	<u>34,000,000 V</u>

**6. HMS802 - VOCATIONAL REHABILITATION**

OPERATING		27.13 *	27.13 *
	HMS	4,084,904 A	4,085,181 A
		95.37 *	95.37 *
	HMS	12,949,367 N	13,775,679 N
	<u>HMS</u>	<u>V</u>	<u>1,124,575 V</u>
INVESTMENT CAPITAL	HMS	1,330,200 W	1,330,200 W
	HMS	250,000 C	C

SECTION 6. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items C.28, C.32, and C.33 in section 3 to read as follows:

**C. TRANSPORTATION FACILITIES****"28. TRN511 - HAWAII HIGHWAYS**

OPERATING		124.00 *	124.00 *
	TRN	24,490,830 B	22,960,942 B
INVESTMENT CAPITAL	<u>TRN</u>		<u>11,000,000 V</u>
	TRN	400,000 B	B
	TRN	11,870,000 E	4,299,000 E
	TRN	43,280,000 N	10,801,000 N
	TRN	275,000 X	X

**32. TRN561 - KAUAI HIGHWAYS**

OPERATING		51.00 *	51.00 *
	TRN	13,135,766 B	14,214,142 B
INVESTMENT CAPITAL	<u>TRN<sup>2</sup></u>	<u>V</u>	<u>3,200,000 V</u>
	TRN	6,700,000 E	9,900,000 E
	TRN	7,200,000 N	13,600,000 N

**33. TRN595 - HIGHWAYS ADMINISTRATION**

OPERATING		80.00 *	80.00 *
	TRN	76,115,141 B	88,562,587 B
INVESTMENT CAPITAL	TRN	3,655,940 N	4,417,330 N
	TRN	18,575,000 B	18,000,000 B
	TRN	6,824,000 E	6,974,000 E
	TRN	12,902,000 N	26,501,000 N
	<u>TRN</u>	<u>V</u>	<u>1,800,000 V</u>

SECTION 7. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items E.5, E.6, E.13, and E.16 in section 3 to read as follows:

**E. HEALTH**

**“5. HTH501 - DEVELOPMENTAL DISABILITIES**

OPERATING	HTH	236.75 *	236.75 *
		66,576,526 A	[71,625,299 A] <u>61,340,842 A</u>
	HTH	3.00 *	3.00 *
		1,025,331 B	1,025,331 B
		60,118,132 U	[64,264,776 U] <u>74,549,223 U</u>

**6. HTH560 - FAMILY HEALTH**

OPERATING	HTH	171.75 *	178.75 *
		45,263,183 A	[45,109,259 A] <u>44,841,749 A</u>
	HTH	7.00 *	9.00 *
		7,110,659 B	[7,376,539 B] <u>7,644,049 B</u>
	HTH	183.50 *	182.50 *
		41,946,810 N	42,099,682 N
	HTH	1.00 *	1.00 *
		1,543,739 U	3,143,739 U
INVESTMENT CAPITAL	HTH	C	400,000 C

**13. HTH420 - ADULT MENTAL HEALTH - OUTPATIENT**

OPERATING	HTH	198.50 *	198.50 *
		73,268,683 A	82,539,423 A
	HTH	22,382,981 B	[24,832,981 B] <u>28,199,510 B</u>
		1,643,030 N	1,643,030 N

**16. HTH460 - CHILD AND ADOLESCENT MENTAL HEALTH**

OPERATING	HTH	193.50 *	193.50 *
		44,103,749 A	[45,063,201 A] <u>43,603,248 A</u>
	HTH	17.00 *	17.00 *
		19,636,965 B	[18,636,965 B] <u>20,096,918 B</u>
	HTH	2,555,977 N	2,568,019 N
		2,260,313 U	2,260,313 U”

SECTION 8. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items F.2, F.3, F.4, F.10, F.12, F.17, F.19, F.24, F.26, and F.29 in section 3 to read as follows:

**F. SOCIAL SERVICES**

**“2. HMS302 - GENERAL SUPPORT FOR CHILD CARE**

OPERATING	HMS	26.07 *	26.07 *
		1,245,650 A	1,245,908 A
	HMS	15.93 *	16.93 *
		6,512,325 N	6,683,439 N
	HMS	V	<u>500,000 V</u>

**3. HMS303 - CHILD PROTECTIVE SERVICES PAYMENTS**

OPERATING	HMS	44,816,013 A	41,816,013 A
		20,095,666 N	20,095,666 N
	HMS	V	<u>1,705,010 V</u>

**4. HMS305 - CASH SUPPORT FOR CHILD CARE**

OPERATING	HMS	22,411,811 A	22,411,811 A
		34,250,754 N	34,250,754 N
	HMS	V	<u>2,600,000 V</u>

**10. HMS211 - CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY**

OPERATING	HMS	38,182,284 A	38,182,284 A
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	HMS	41,000,000 N	<del>[41,000,000 N]</del> <u>44,000,000 N</u>
12. HMS220 - RENTAL HOUSING SERVICES			
		1.00 *	1.00 *
OPERATING	HMS	10,194,240 A	5,039,240 A
		200.00 *	200.00 *
	HMS	43,869,465 N	43,869,475 N
		23.00 *	23.00 *
INVESTMENT CAPITAL	HMS	3,992,323 W	3,992,323 W
	HMS	25,000,000 C	16,410,000 C
	<u>HMS</u>	<u>V</u>	<u>16,245,443 V</u>
17. HMS224 - HOMELESS SERVICES			
		5.00 *	5.00 *
OPERATING	HMS	11,276,608 A	14,111,698 A
	HMS	1,369,108 N	1,369,108 N
	<u>HMS</u>	<u>V</u>	<u>2,166,888 V</u>
INVESTMENT CAPITAL	HMS	850,000 C	1,454,000 C
19. HMS401 - HEALTH CARE PAYMENTS			
OPERATING	HMS	479,133,108 A	<del>[498,189,087 A]</del> <u>423,393,786 A</u>
	HMS	672,850,832 N	693,906,153 N
	HMS	44,409,563 U	44,409,563 U
	<u>HMS</u>	<u>V</u>	<u>115,356,431 V</u>
24. HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS			
		14.00 *	14.00 *
OPERATING	HHL	679,070 A	679,274 A
		66.00 *	66.00 *
	HHL	5,649,008 B	5,063,477 B
	HHL	16,393,455 N	9,600,545 N
		51.00 *	51.00 *
INVESTMENT CAPITAL	HHL	3,878,386 T	3,640,482 T
	HHL	375,000 C	550,000 C
	HHL	E	100,000,000 E
	<u>HHL</u>	<u>V</u>	<u>10,200,000 V</u>
26. HTH904 - EXECUTIVE OFFICE ON AGING			
		3.30 *	3.74 *
OPERATING	HTH	6,370,552 A	6,119,214 A
		7.45 *	8.01 *
	HTH	7,443,720 N	7,443,720 N
	<u>HTH</u>	<u>V</u>	<u>485,000 V</u>
INVESTMENT CAPITAL	HTH	250,000 C	800,000 C
29. HMS903 - GENERAL SUPPORT FOR SELF SUFFICIENCY SERVICES			
		62.96 *	62.96 *
OPERATING	HMS	10,444,592 A	10,420,477 A
		57.04 *	62.04 *
	HMS	59,079,035 N	<del>[55,059,052 N]</del> <u>65,059,052 N</u>
	<u>HMS</u>	<u>V</u>	<u>25,550,000 V</u>

SECTION 9. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending items G.2, G.3, and G.5 in section 3 to read as follows:

G. FORMAL EDUCATION

"2. EDN150 – COMPREHENSIVE STUDENT SUPPORT SERVICES

		5,615.50 *	5,728.50 *
OPERATING	EDN	361,156,533 A	<del>[355,373,685 A]</del> <u>355,224,059 A</u>

		2.00 *	2.00 *
	EDN	49,050,756 N	49,050,756 N
	<u>EDN</u>	<u>V</u>	<u>20,493,170 V</u>
	EDN	2,000,000 W	<u><del>2,000,000 W</del></u>
			<u>2,149,626 V</u>
3. EDN200 – INSTRUCTIONAL SUPPORT			
		232.50 *	234.50 *
OPERATING	EDN	34,454,113 A	33,297,750 A
		6.00 *	6.00 *
	EDN	1,600,000 B	1,700,000 B
	EDN	2,222,450 N	2,026,461 N
	EDN	800,000 U	800,000 U
			<u>175,966 V</u>
5. EDN400 – SCHOOL SUPPORT			
		644.00 *	644.00 *
OPERATING	EDN	170,290,488 A	169,455,447 A
		726.50 *	726.50 *
	EDN	23,112,819 B	23,112,819 B
		3.00 *	3.00 *
	EDN	35,659,876 N	35,659,880 N
	<u>EDN</u>	<u>V</u>	<u>348,600 V</u>
		4.00 *	4.00 *
	EDN	6,000,000 W	7,022,625 W"

SECTION 10. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by adding a new section after section 46.1 to read as follows:

"SECTION 46.2. Provided that of the general fund appropriation for Hawaii health systems corporation (HTH 210), there is appropriated the sum of \$14,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended to pay accounts payable vendors for medical services, equipment, or supplies; provided further that the funds shall be allocated as follows:

- (1) \$3,300,000 for the Kauai Veterans Memorial Hospital;
- (2) \$3,700,000 for the Kona Community Hospital; and
- (3) \$7,000,000 for the Hilo Medical Center;

provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund."

SECTION 11. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending item A.4, and adding item A.6.01, in section 125 to read:

#### A. ECONOMIC DEVELOPMENT

##### AGR141 – AGRICULTURAL RESOURCE MANAGEMENT

"4. P97002 UPCOUNTRY MAUI WATERSHED, MAUI

PLANS, LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR THE INSTALLATION  
OF PIPELINE FOR THE UPCOUNTRY MAUI  
WATERSHED PROJECT, KULA, MAUI.  
THIS PROJECT IS DEEMED NECESSARY  
TO QUALIFY FOR FEDERAL AID AND/OR  
REIMBURSEMENT.

PLANS	50	50
LAND	100	100
DESIGN	200	200

CONSTRUCTION		2,650	[2,650]
			<u>3,200</u>
TOTAL FUNDING	AGR	1,500 C	1,500 C
	AGR	1,500 N	1,500 N
	<u>AGR</u>	<u>V</u>	<u>550 V</u>

#### 6.01. LOWER HAMAKUA DITCH SYSTEM, HAWAII

CONSTRUCTION FOR IMPROVEMENTS  
TO THE LOWER HAMAKUA DITCH  
SYSTEM, TOGETHER WITH APPURTENANT  
WORKS, INCLUDING IMPROVEMENTS TO  
MITIGATE FLOOD DAMAGE. THIS PROJECT  
IS DEEMED NECESSARY TO QUALIFY  
FOR FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT.

CONSTRUCTION			1,800
TOTAL FUNDING	AGR	V	<u>1,800 V</u>

SECTION 12. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending item C.118 in section 125 to read as follows:

#### C. TRANSPORTATION FACILITIES

##### TRN595 – HIGHWAYS ADMINISTRATION

“118. X222 SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE

CONSTRUCTION FOR SEISMIC RETROFIT  
IMPROVEMENTS FOR VARIOUS  
BRIDGES STATEWIDE. THIS PROJECT  
IS DEEMED NECESSARY TO QUALIFY  
FOR FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT.

CONSTRUCTION			[7,500]
			<u>9,300</u>
TOTAL FUNDING	TRN	E	1,500 E
	TRN	N	6,000 N
	<u>TRN</u>	<u>V</u>	<u>1,800 V</u>

SECTION 13. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by adding items F.13.01 and F.18.02 to section 125 to read as follows:

#### F. SOCIAL SERVICES

##### HMS220 – RENTAL HOUSING SERVICES

“13.01. LUMP SUM CIP – ARRA HUD STIMULUS RENOVATIONS, STATEWIDE

CONSTRUCTION FOR NON-ROUTINE  
REPAIRS AND MAINTENANCE.  
IMPROVEMENTS, AND RENOVATIONS  
STATEWIDE.

CONSTRUCTION			16,245
TOTAL FUNDING	HMS	V	<u>16,245 V</u>

HHL602 – PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS

“18.02. NAHASDA DEVELOPMENT PROJECTS (ARRA). STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION  
FOR VARIOUS HAWAIIAN HOMESTEAD  
PROJECTS AND IMPROVEMENTS  
STATEWIDE, PURSUANT TO THE NATIVE  
AMERICAN HOUSING ASSISTANCE AND  
SELF-DETERMINATION ACT OF 1996  
AND THE AMERICAN RECOVERY AND  
REINVESTMENT ACT OF 2009.

PLANS  
DESIGN

CONSTRUCTION

TOTAL FUNDING HHL

V

$\frac{1}{1}$   
 $\frac{10.198}{10,200 V}$

PART II

SECTION 14. Act 200, Session Laws of Hawaii 2003, as amended by Act 41, Session Laws of Hawaii 2004, is amended by adding a new section to read as follows:

“SECTION 129.1. Provided that the governor may approve the expenditure of federal stimulus funds for operating and capital improvement purposes designated with the letter (V) which are in excess of levels authorized by the legislature; provided further that the governor may allow for an increase in the federal stimulus fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor’s approval to expend these funds the governor shall submit a report to the legislature.”

SECTION 15. Act 200, Session Laws of Hawaii 2003, as amended by Act 41, Session Laws of Hawaii 2004, is amended by amending the definition of “means of financing” to read as follows:

““Means of financing” (or “MOF”) means the source from which funds are appropriated, or authorized, as the case maybe, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

- A general funds
- B special funds
- C general obligation bond fund
- D general obligation bond fund with debt service cost to be paid from special funds
- E revenue bond funds
- J federal aid interstate funds
- K federal aid primary funds
- L federal aid secondary funds
- M federal aid urban funds
- N other federal funds
- R private contributions
- S county funds
- T trust funds
- U interdepartmental transfers
- V federal stimulus funds
- W revolving funds
- X other funds”

SECTION 16. Act 200, Session Laws of Hawaii 2003, section 3, as amended by Act 41, Session Laws of Hawaii 2004, section 200, is amended by amending item C.27 to read:

“27. TRN 501 – OAHU HIGHWAYS

		264.00 *	233.00 *
OPERATING	TRN	44,368,085 B	43,535,244 B
	TRN	800,000 N	800,000 N
INVESTMENT CAPITAL	TRN	B	5,000,000 B
	TRN	42,995,000 E	12,755,000 E
	TRN	43,020,000 N	36,220,000 N
	TRN	<u>17,000,000 V</u>	<u>V</u>
	TRN	X	6,200,000 X”

SECTION 17. Act 200, Session Laws of Hawaii 2003, section 77, as amended by Act 41, Session Laws of Hawaii 2004, section 5, is amended by amending item C-37 to read:

“37. S269 KAMEHAMEHA HIGHWAY, SOUTH PUNALUU BRIDGE REPLACEMENT, OAHU

CONSTRUCTION FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		[42,250]	29,250
TOTAL FUNDING	TRN	2,450 E	E
	TRN	9,800 N	N
	TRN	<u>17,000 V</u>	<u>V”</u>

PART IV

SECTION 18. Act 178, Session Laws of Hawaii 2005, as amended by Act 160, Session Laws of Hawaii 2006, is amended by adding a new section to read as follows:

“SECTION 131.1. Provided that the governor may approve the expenditure of federal stimulus funds for operating and capital improvement purposes designated with the letter (V) which are in excess of levels authorized by the legislature; provided further that the governor may allow for an increase in the federal stimulus fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor’s approval to expend these funds the governor shall submit a report to the legislature.”

SECTION 19. Act 178, Session Laws of Hawaii 2005, as amended by Act 160, Session Laws of Hawaii 2006, is amended by amending the definition of “means of financing” to read as follows:

“1“Means of financing” (or “MOF”) means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

- A general funds
- B special funds
- C general obligation bond fund
- D general obligation bond fund with debt service cost to be paid from special funds
- E revenue bond funds
- J federal aid interstate funds
- K federal aid primary funds
- L federal aid secondary funds



M federal aid urban funds  
 N other federal funds  
 R private contributions  
 S county funds  
 T trust funds  
 U interdepartmental transfers  
V federal stimulus funds  
 W revolving funds  
 X other funds"

SECTION 20. Act 178, Part II, Session Laws of Hawaii 2005, as amended by Act 160, Session Laws of Hawaii 2006, section 3, is amended as follows:

1. By amending item C-1 to read:

"1. TRN 102 – HONOLULU INTERNATIONAL AIRPORT

		588.50 *	588.50 *
OPERATING	TRN	87,306,848 B	105,611,169 B
	TRN	4,000,000 N	2,425,000 N
INVESTMENT CAPITAL	TRN	4,879,000 B	19,145,000 B
	TRN	E	106,812,000 E
	TRN	8,012,000 N	9,135,000 N
	<u>TRN</u>	<u>V</u>	<u>25,000,000 V</u>
	TRN	35,938,000 X	88,277,000 X"

2. By amending item C-7 to read:

"7. TRN 131 – KAHULUI AIRPORT

		149.00 *	149.00 *
OPERATING	TRN	19,423,988 B	17,764,381 B
	TRN	600,000 N	
INVESTMENT CAPITAL	TRN	3,675,000 B	7,450,000 B
	TRN	E	33,915,000 E
	TRN	2,329,000 N	18,315,000 N
	<u>TRN</u>	<u>V</u>	<u>11,000,000 V</u>
	TRN	10,293,000 X	X"

3. By amending item C-15 to read:

"15. TRN 195 – AIRPORTS ADMINISTRATION

		109.00 *	109.00 *
OPERATING	TRN	99,457,463 B	99,146,790 B
INVESTMENT CAPITAL	TRN	16,166,000 B	14,376,000 B
	TRN	E	4,150,000 E
	TRN	29,750,000 N	39,220,000 N
	<u>TRN</u>	<u>V</u>	<u>15,000,000 V</u>
	TRN	X	31,200,000 X"

SECTION 21. Act 178, Session Laws of Hawaii 2005, section 85, as amended by Act 160, Session Laws of Hawaii 2006, section 5, is amended as follows:

1. By amending item C-9.02 to read:

"9.02 A24B HONOLULU INTERNATIONAL AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, OAHU

CONSTRUCTION FOR INLINE BAGGAGE  
 SYSTEM IMPROVEMENTS INCLUDING  
 EXPLOSIVE DETECTION SYSTEMS,  
 BAGGAGE BELT CONVEYORS AND OTHER  
 RELATED IMPROVEMENTS. THIS PROJECT  
 IS DEEMED NECESSARY TO QUALIFY  
 FOR FEDERAL AID FINANCING AND/OR  
 REIMBURSEMENT.

CONSTRUCTION	[63,250] <sup>3</sup>	88.250
TOTAL FUNDING <sup>4</sup>	E	63,250 E
	V	<u>25,000 V"</u>

2. By amending item C-22.02 to read:

"22.02. D08L KAHULUI AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, MAUI

CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	[14,300] <sup>3</sup>	25,300
TOTAL FUNDING <sup>4</sup>	E	14,300 E
	V	11,000 V"

3. By amending item C-34 to read:

"C-34. F05C STRUCTURAL IMPROVEMENTS TO AIRFIELD PAVING, STATEWIDE

DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS AT STATEWIDE AIRPORTS.<sup>5</sup> REPLACE, RECONSTRUCTION, GROOVING, PAINTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	800	900
CONSTRUCTION	10,250	[11,370] <sup>3</sup> 26,370
TOTAL FUNDING	TRN 3,200 B	4,500 B
	TRN 7,850 N	7,770 N
	TRN V	15,000 V"

SECTION 22. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by amending section 167 to read as follows:

"SECTION 167. Provided that the governor may approve the expenditure of federal funds for operating and capital improvement purposes which are in excess of levels authorized by the legislature only in the event that the expenditure is made for the benefit of the public; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor's approval to expend these funds the governor shall submit a report to the legislature; provided further that the report shall include the date when the program to receive the federal funds was first notified that additional federal funds may be available, the date that additional federal funds were known to be available, and the reasons why additional federal fund appropriations were not sought during the preceding legislative session, and an explanation of the public benefit; provided further that in the event of federal funds received as a<sup>6</sup> result of a natural or manmade disaster, the governor shall submit notification to the legislature within five days after the governor's approval to expend funds has been granted; and provided further that the governor shall submit a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2008 and 2009 regular sessions."

SECTION 23. Act 213, Session Laws of Hawaii 2007, as amended by Act 158, Session Laws of Hawaii 2008, is amended by adding a new section after section 167 to read as follows:

“SECTION 167.1. Provided that the governor may approve the expenditure of federal stimulus funds for operating and capital improvement purposes designated with the letter V which are in excess of levels authorized by the legislature; provided further that the governor may allow for an increase in the federal stimulus fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to approving the expenditure of these funds the governor shall submit a report to the legislature.”

### PART III

SECTION 24. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$8,100,000 or so much thereof as may be necessary for fiscal year 2008-2009 for adult mental health services under HTH 420.

The sum appropriated shall be expended by the department of health.

SECTION 25. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$14,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the Hawaii health systems corporation under HTH 210.

The sum appropriated shall be expended by the department of health.

### PART IV

SECTION 26. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 27. This Act shall take effect on May 1, 2009.

(Approved May 20, 2009.)

#### Notes

1. Prior to amendment “(c)” appeared here.
2. Should be underscored.
3. So in original.
4. Prior to amendment “TRN” appeared here.
5. Prior to amendment “improvements include paving, mill and” appeared here.
6. Prior to amendment “the” appeared here. “A” should be underscored.

## ACT 68

H.B. NO. 586

A Bill for an Act Relating to the Kaneohe Bay Regional Council.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 200D, Hawaii Revised Statutes, is repealed.

SECTION 2. Notwithstanding the repeal of chapter 200D, Hawaii Revised Statutes, the department of land and natural resources shall continue to exercise full force and effect with respect to all plans, programs, or other policies

adopted by the Kaneohe bay regional council prior to the effective date of this Act.

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved May 22, 2009.)

## ACT 69

H.B. NO. 813

A Bill for an Act Relating to Language Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii is a melting pot of diverse nationalities and cultures. Diversity defines Hawaii's residents and makes this State a unique place to live.

According to the 2000 United States Census, over twelve per cent of the State's residents speak English "less than very well." These residents face daily challenges, whether it is struggling to consult with a school counselor about their child's performance at school or to understand a notice regarding public housing benefits.

In a movement to reinforce Title VI of the 1964 Civil Rights Act barring discrimination on the basis of race, color, or national origin, President Clinton issued an executive order on August 11, 2000, directing all federal agencies to publish written policies on how recipients can provide access to persons of limited English proficiency and improve language accessibility to its programs.

The legislature finds that as one of only four states to enact a statewide law on language access, Hawaii is on the leading edge of breaking down language barriers to enable its diverse population, particularly persons who are limited in their English language proficiency, to gain equal access to much-needed government services at no extra charge. Whether the State provides access to its services and programs through an interpreter or translates key documents needed to access its services, residents with limited English proficiency benefit by being able to fully participate in the community as self-sufficient and productive members of the community. Ongoing education and efforts are needed to ensure that language access becomes the norm in the provision of government services.

The purpose of this Act is to designate the month of August as "Language Access Month" to promote awareness of language access for government services and emphasize the importance of and need for language access in Hawaii's diverse society.

SECTION 2. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§8- Language access month.** The month of August shall be known and designated as "Language Access Month" to promote awareness of language access for government services and emphasize the importance of and need for language access in Hawaii's diverse society. This month is not and shall not be construed as a state holiday."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 22, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 70

S.B. NO. 427

A Bill for an Act Relating to General Excise Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that pursuant to the authority granted by Congress under title 10 United States Code section 1071 et seq., the United States Department of Defense established the TRICARE program as the managed care component of the Military Health System, a federal government program that provides health care services to over nine million Americans, composed of active duty, reserve, and retired members of the United States uniformed services, their family members, and survivors, including approximately one hundred fifty thousand current and former service members and their family members who reside in Hawaii.

The legislature further finds that the purpose and mission of the TRICARE program is to ensure the availability of high-quality, low-cost health care services to members of the uniformed services and their families, which is crucial to ensuring military readiness, national defense, and the health and welfare of the residents of the State.

The TRICARE program augments the health care services provided by the United States Department of Defense personnel at military treatment facilities. TRICARE is a program of the Department of Defense, TRICARE Management Activity, which contracts with third-party administrators, known as "managed care support contractors", to establish and maintain networks of TRICARE-authorized civilian health care providers in various regions of the United States. On behalf of the United States Department of Defense, managed care support contractors make advances to health care providers, including doctors, hospitals, and other providers, for costs of health care services provided to TRICARE beneficiaries. The United States Department of Defense reimburses managed care support contractors for the actual cost or advancement made to third party health care providers.

The legislature understands that some uncertainty may exist about whether the amounts received by a managed care support contractor of the TRICARE program for the actual cost or advancement to third party health care providers, on behalf of the federal government, are subject to the state general excise tax. The legislature finds that, to avoid increasing the costs of health care services delivered through the TRICARE program and any adverse consequences to members of our uniformed services and their families from the increased costs, it is desirable to clarify that the amounts received by a managed care support contractor of the TRICARE program are not subject to the state general excise tax.

The purpose of this Act is to clarify that the amounts received by a managed care support contractor of the TRICARE program for the actual cost or advancement to third party health care providers, pursuant to a contract with the United States for the administration of the TRICARE program, are excluded from the state general excise tax.

SECTION 2. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

**"§237-24 Amounts not taxable.** This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any Act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;
- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State; a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled; a general, limited, or limited liability partnership, all of whose partners are blind, deaf, or totally disabled; or a limited liability company, all of whose members are blind, deaf, or totally disabled;
- (14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:

- (A) The producer is an independent cane farmer, so classed by the Secretary of Agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented;
- (B) The value or gross proceeds of the sale of the sugar, and other products manufactured from the sugarcane, [is] are included in the measure of the tax levied on the manufacturer under section 237-13(1) or (2);
- (C) The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer; and
- (D) The producer's gross proceeds of sales are reduced by reason of the tax on the value or sale of the manufactured products;
- (15) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes; ~~[and]~~
- (16) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by ~~[such]~~ the corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements; provided that ~~[such a]~~ the cooperative corporation is a corporation:
  - (A) Having one and only one class of stock outstanding;
  - (B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation; and
  - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation~~[-]; and~~
- (17) Amounts received by a managed care support contractor of the TRICARE program that is established under Title 10 United States Code Chapter 55, as amended, for the actual cost or advancement to third party health care providers pursuant to a contract with the United States."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009 and shall be repealed as of December 31, 2013; provided that section 237-24, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009.

(Approved May 22, 2009.)

## ACT 71

H.B. NO. 632

A Bill for an Act Relating to Policy Advisory Board on Veterans' Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 363-3.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a policy advisory board on veterans’ services within the office of veterans’ services. The board shall consist of nine members appointed by the governor as provided in section 26-34. Five members shall be veterans, and there shall be at least one member residing in each of the counties of Maui and Kauai. The county of Hawaii shall be represented by two members, one member shall reside in east Hawaii and one member shall reside in west Hawaii. Four members shall reside in the city and county of Honolulu. At least three members shall be women. The director of health, the director of human services, the director of labor and industrial relations, and the adjutant general shall serve as ex-officio non-voting members. The director for the office of veterans’ services shall serve as an ex-officio voting member. The chairperson of the board shall be elected by the majority of the board. The members shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved May 22, 2009.)

## ACT 72

H.B. NO. 1059

A Bill for an Act Relating to the One Call Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the frequency of use and complexity of underground infrastructure in this State has steadily increased over the past several decades. The legislature further finds that the public and all levels of government are increasingly dependent on the safe and reliable provision of utilities and services that are delivered by subsurface facilities, including electricity, water, drainage, sewer, telecommunications, cable television, oil, petroleum products, gas, optical signals, traffic control, and hazardous liquids. A consequence of increased dependence on these utilities and services is an increased need to protect them from disruption and to avoid the attendant direct and indirect costs, damages and to avoid injuries caused by their disruption.

To address these concerns, the legislature, through Act 141, Session Laws of Hawaii 2004, mandated that the public utilities commission establish and begin operations, by or before January 1, 2006, of a one call center to provide advance warning to excavators of the location of subsurface installations in areas of proposed excavation to protect those installations from damage. Act 141, codified as chapter 269E, Hawaii Revised Statutes, included a repeal date of June 30, 2009.

After two years of operations, the one call center is still in a growth stage with respect to the maximum coordination of its efforts. However, the legislature finds that the one call center has been successful in its role of providing advance warning to excavators of the location of subsurface installations and concomitant protection of underground facilities, and continues to benefit the general public and governmental entities.

The legislature also finds that certain excavation activities, such as pest control operations, should be exempted from the one call center program, because they do not present the risks to underground facilities that the one call center was designed to address.



The purpose of this Act is to:

- (1) Make the one call center program permanent by repealing the June 30, 2009, sunset provision in Act 141; and
- (2) Exempt the activities of pest control operators licensed under chapter 460J, Hawaii Revised Statutes, from the one call center program for three years.

SECTION 2. Section 269E-2, Hawaii Revised Statutes, is amended by amending the definition of "excavation" to read as follows:

"Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. "Excavation" shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of improving:

- (1) Improving an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families~~[-]; or~~
- (2) Any pest control activity regulated under chapter 460J."

SECTION 3. Act 141, Session Laws of Hawaii 2004, as amended by section 51 of Act 22, Session Laws of Hawaii 2005, is amended by amending section 7 to read as follows:

~~"SECTION 7. This Act shall take effect on July 1, 2004[, and shall be repealed on June 30, 2009; provided that sections 269-30 and 269-33, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act]."~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2009; provided that section 2 of this Act shall be repealed on June 30, 2012 and section 269E-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 28, 2009.

(Approved May 26, 2009.)

**ACT 73**

**S.B. NO. 35**

A Bill for an Act Relating to Mortgages.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to exempt certified public accountants, who are already regulated by and subject to the rules adopted by the board of public accountancy, from the provisions of the Mortgage Rescue Fraud Prevention Act.

SECTION 2. Section 480E-2, Hawaii Revised Statutes, is amended by amending the definition of “distressed property consultant” to read as follows:

““Distressed property consultant” means any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a distressed property:

- (1) Stop or postpone the foreclosure sale or loss of any distressed property due to the nonpayment of any loan that is secured by the distressed property;
- (2) Stop or postpone the charging of any lien or encumbrance against any distressed property or eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (4) Assist the owner to exercise any cure of default arising under Hawaii law;
- (5) Obtain any extension of the period within which the owner may reinstate the owner’s rights with respect to the property;
- (6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
- (8) Avoid or ameliorate the impairment of the owner’s credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (9) Save the owner’s residence from foreclosure or loss of home due to nonpayment of taxes.

“Distressed property consultant” shall not include any of the following:

- (1) A person or the person’s authorized agent acting under the express authority or written approval of the federal Department of Housing and Urban Development;
- (2) A person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
- (3) Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state, or under the laws of the United States;
- (4) Licensed attorneys engaged in the practice of law;
- (5) Certified public accountants licensed under chapter 466, persons holding a permit to practice public accountancy in the State of Hawaii, and persons holding a valid certified public accountant license issued under the laws of another state or territory who are lawfully practicing in the State of Hawaii with a temporary permit to practice pursuant to rules established by the board of public accountancy and who are subject to regulation by the board of public accountancy while engaged in the practice of public accountancy;
- [5] (6) A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons

- or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities; or
- ((6)) (7) A nonprofit organization that, pursuant to chapter 446, offers counseling or advice to an owner of a distressed property, if the nonprofit organization has no contract or agreement for services with lenders, distressed property purchasers, or any person who effects loans or distressed property purchases.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.  
(Approved May 26, 2009.)

## ACT 74

H.B. NO. 1061

A Bill for an Act Relating to Public Utilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the health and welfare of the State’s citizens depend in large part on their ability to access essential water and sewer services. The state public utilities commission regulates water and sewer services provided by private companies but does not regulate the same services provided by the counties. To ensure that the commission has all the necessary authority to take proactive measures on behalf of customers when a regulated water or sewer utility either fails to provide adequate and reasonable service to its customers or creates a serious and imminent threat to the health and welfare of its customers, the legislature believes that the commission should have the power to appoint a receiver to ensure that utility services are continued or brought back up to appropriate standards.

The purpose of this Act is to provide the public utilities commission with authority to appoint a receiver to take temporary action necessary to assure continued adequate water or sewer service.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Appointment of receiver for public utilities.** (a) Whenever the commission finds that a regulated water utility or regulated sewer utility is failing, or that there is an imminent threat of the utility failing, to provide adequate and reasonable service to its customers, and that the failure is a serious and imminent threat to health, safety, and welfare, the commission may appoint a receiver to take any temporary action necessary to assure continued service or to bring the service up to appropriate regulatory standards. The commission may also appoint a receiver to take any temporary action necessary to assure continued service if, after notice and hearing, the commission finds that any water or sewer utility regulated under this chapter consistently fails to provide adequate and reasonable service. In carrying out its responsibilities, the receiver and any additional outside legal counsel, consultants, or staff the commission or receiver may deem necessary under the circumstances, shall have the authority to gain access to all of the utility company assets and records and to manage those assets in a manner that will restore or maintain an acceptable level of service to customers.

The receiver shall be authorized to expend existing utility company revenues for labor and materials and to commit additional resources as are essential to providing an acceptable level of service. These expenditures shall be funded in accordance with generally accepted ratemaking practices. Any costs incurred by the commission, its staff, or the appointed receiver under this section shall be the responsibility of the utility in receivership or its ratepayers. Control of and responsibility for the utility shall remain with the receiver until the utility can be returned to the original owners, transferred to new owners, or liquidated as the commission determines to be in the public interest.

(b) If the commission determines that the utility's action or inaction that caused it to be placed under the control and responsibility of a receiver under this section was due to intentional misappropriation or wrongful diversion of the assets or income of the utility or to other wilful misconduct by any director, officer, or manager of the utility, it may require such director, officer, or manager to make restitution to the utility."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 75

H.B. NO. 1152

A Bill for an Act Relating to Committed Persons' Accounts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353-20, Hawaii Revised Statutes, is amended to read as follows:

**"§353-20 Custody of moneys; accounts for committed persons, etc.** All sums collected under this chapter and any other authorized sources shall be deposited by the department into ~~[an individual trust account to the credit of the committed person;]~~ one or more accounts with one or more financial institutions opened by the department for the specific purpose of maintaining committed persons' funds. The department shall maintain ~~[individual ledger accounts for each committed person and shall issue to each committed person a quarterly statement showing credits and debits;]~~ accounts for each committed person to allow committed persons use of their own funds for approved expenses and purchases during incarceration. The director may designate a percentage of all funds earned by the committed person while in custody to be deposited and held in a nonspendable account for the purpose of providing funds for that same committed person upon release from custody. The structure of these accounts shall be designed so that all funds deposited by or for a committed person shall be credited to the accounts. Accounts maintained by the department for committed persons shall not bear interest. No interest of any kind shall be paid to a committed person on any account maintained by the department for the committed person. The department shall provide quarterly accounting statements

to all committed persons held in custody for over one quarter of the year. The department shall conduct annual audits on all committed persons' accounts."

SECTION 2. This Act shall apply to all committed persons' accounts established before and after the effective date of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 2009.)

## ACT 76

H.B. NO. 1713

A Bill for an Act Relating to Hazards.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that conditions exist on public and private property that pose a significant risk of harm to the public. In the case of private property, a dangerous condition may exist that poses a significant risk of harm to an adjoining landowner. While the affected landowners may have rights to personally address some conditions, there are situations in which doing so may place the affected landowner in a position of financial hardship or at risk of personal harm. Where a dangerous condition exists and injury is caused as a result, private property owners may seek remedies by way of civil actions. However, the courts are not readily accessible to all persons, especially those who do not have the economic means to hire legal counsel.

The purpose of this Act is to allow designated state employees, at the discretion of the governor, to enter private property to mitigate hazardous situations such as dangerous trees or branches that pose a falling hazard, unstable rock and soil conditions, or clogged streams, after giving the landowner notice and a reasonable opportunity to mitigate the hazardous situation without assistance from the State.

SECTION 2. Chapter 128, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§128- Civil defense powers; mitigation of hazardous situations.** (a) Even in the absence of a civil defense activity or other emergency, the governor may authorize designated state employees to enter private property at reasonable times to mitigate situations deemed by the governor to be hazardous to the health and safety of the public; provided that this section shall be applicable only to the following actions:

- (1) Cutting, trimming, or removing dangerous trees or branches that pose a hazard to other properties;
- (2) Stabilizing or removing unstable rock and soil hazards; or
- (3) Cleaning streams and waterways to mitigate or prevent flooding or other disasters;

provided further that at least ten days' notice shall be provided to the landowner and to the occupier of the private property of the governor's intention to authorize designated state employees to enter the property to mitigate the hazardous situation; provided further that the landowner or occupier shall be given a rea-

sonable opportunity to mitigate the hazardous situation without assistance of the State before designated state employees may enter the property.

(b) Written notice sent to the landowner's last known address by certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. If land ownership cannot be determined, notice shall be given once in a daily or weekly publication of general circulation in the county where any action or proposed action will be taken.

(c) If entry is refused, the governor may apply to the district court in the circuit in which the property is located for a warrant to enter the premises. The district court may issue a warrant directing the chief of the appropriate county police to assist the governor in gaining entry onto the premises during regular working hours or at other reasonable times.

(d) The governor may seek recovery and reimbursement, by appropriate proceedings, of all costs and expenses incurred in the mitigation of a hazardous situation under this section, and any costs and expenses imposed against any landowner shall be a lien upon the landowner's property."

SECTION 3. Section 127-10, Hawaii Revised Statutes, is amended to read as follows:

**"§127-10 Disaster relief during suspension of preceding sections.** During any period in which sections 127-1 to 127-9 are not in effect, the governor and political subdivisions may exercise any and all of their powers under chapter 128 or that relate to disasters resulting from enemy attacks, ~~[in order]~~ to provide other disaster relief. All provisions of law that relate to disasters resulting from enemy attacks during ~~[such]~~ the period and all provisions of chapter 128 are made applicable to other disaster relief, including without limitation, provisions making or authorizing appropriations or expenditures.

As used in this section, "other disaster relief" means the preparation for and the carrying out of all functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by fire, flood, tidal wave, volcanic eruption, earthquake, or other natural causes and major disasters caused by acts of man~~;~~ including ~~[but not limited to,]~~ massive oil spills, nuclear accidents, airplane crashes, and civil disturbances."

SECTION 4. Act 78, Session Laws of Hawaii 2007, is amended by amending section 6 to read as follows:

"SECTION 6. Any provision of the Act to the contrary notwithstanding, the appropriations under this Act shall not lapse at the end of the fiscal year for which the appropriations were made. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, ~~[2009,]~~ 2010, shall lapse.

Should any projects paid for by state funds under this Act later become eligible for federal reimbursement, the federal reimbursement funds shall be deposited in the emergency and budget reserve fund; provided that moneys expended by departments and agencies of the ~~[state]~~ State or counties for projects under this Act that later become eligible for federal reimbursements shall be reimbursed to the department or agency."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2009; provided that section 4 of this Act shall take effect on June 30, 2009.

(Approved May 26, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 77**

S.B. NO. 892

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, [section] sections 431:10C-115[;] and 431:10G-107, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund,

section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 431:2-215, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner's education and training fund (section 431:2-214), the patients' compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee [~~section~~] (sections 431:10C-115~~], and~~ 431:10G-107), and the captive insurance administrative fund (section 431:19-101.8) to the extent provided by section 431:19-101.8(b), shall be deposited into the compliance resolution fund under section 26-9(o). All sums transferred from the insurance division into the compliance resolution fund may be expended by the commissioner to carry out the commissioner's duties and obligations under title 24."

SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:



“(c) The audit required in subsection (a) and the audited[;] consolidated[;] or combined financial statements as may be approved under subsection (b) shall be prepared in accordance with the National Association of Insurance ~~Commissioners’ annual statement instructions;~~ Commissioners accounting practices and procedures manual and rules adopted by the commissioner following the practices and procedures prescribed by the National Association of Insurance ~~Commissioners’ accounting practices and procedures manuals.~~ Commissioners.”

SECTION 4. Section 431:6-317, Hawaii Revised Statutes, is amended to read as follows:

**“§431:6-317 Common stocks.** (a) ~~[An]~~ To meet the requirements under section 431:6-201, an insurer may invest any of its funds in common shares of stock that are filed with the SVO or are considered “filing exempt” by the Purposes and Procedures Manual of the SVO, or its successor publication~~[-In aggregate];~~ provided that an insurer’s amount of investment in common stocks~~[-including investments]~~ and in non-dividend paying stocks made pursuant to this section and in common trust funds, mutual funds, and exchange traded funds made pursuant to section 431:6-322 ~~[and non-dividend paying stocks;]~~ shall not exceed the greater of twenty-five per cent of its admitted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101.

(b) An insurer may invest any of its funds in common shares of stock in solvent United States corporations after satisfying the requirements under section 431:6-201.

(c) An insurer’s aggregate amount of investment in non-dividend paying stocks ~~[is]~~ shall be subject to the limitations ~~[of]~~ in section 431:6-104.”

SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

~~“(a) Subject to the limitations in subsections (b) and (c), an insurer may invest in:~~

- ~~(1) A bank’s common trust fund as defined in Section 584 of the United States Internal Revenue Code of 1986, as amended;~~
- ~~(2) The securities of any open end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, if the investment company or trust, other than one of which as a subsidiary of the insurer is investment adviser or principal underwriter, has a new value of not less than \$25,000,000 as of the date of investment by the insurer; and~~
- ~~(3) An exchange traded fund that is registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and is traded on a public exchange.]~~

(a) For purposes of this section:

“Common trust funds” means a fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed by the bank in its capacity as a trustee, executor, administrator, guardian, or custodian of accounts as defined in Section 584 of the Internal Revenue Code of 1986, as amended.

“Exchange traded fund” means a security that tracks an index, commodity, or basket of assets similar to an index fund, is registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and is traded on a public exchange.

"Mutual funds" means an investment company that is registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940 (15 United States Code Section 80a-1, et seq.), as amended.

(b) [In aggregate, an insurer's amount of investment] To meet the requirements under section 431:6-201, an insurer may invest in common trust funds, mutual funds, and exchange traded funds[, including investments]; provided that an insurer's amount of investment made pursuant to this section and in common stocks made pursuant to section 431:6-317(a)[,] shall not exceed the greater of twenty-five per cent of its admitted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101. This limitation shall not apply to investments approved on the "Mutual Funds List" from the Purposes and Procedures Manual of the SVO, or its successor publication."

SECTION 6. Section 431:7-206, Hawaii Revised Statutes, is amended to read as follows:

**"§431:7-206 Domestic company credit for retaliatory taxes paid other states.** If by the laws of any state other than this State, or by the action of any public official of another state, any insurer or company, as defined in section 431:1-202, organized or domiciled in this State, shall be required to pay taxes for the privilege of doing business in the other state, and the amounts are imposed or assessed so that the taxes which are or would be imposed against Hawaii domestic insurance companies are greater than those taxes required of insurers organized or domiciled in the other state, to the extent the amounts are legally due to the other states, an insurer or company organized or domiciled in this [State] state may claim a credit against the tax payable pursuant to this article of a sum not to exceed one hundred per cent of the amount. The credit shall not be greater than the tax payable pursuant to this article during the taxable year. All claims for the tax credit under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit."

SECTION 7. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall issue a surplus lines broker license to any producer licensed under article 9A, except producers licensed under section 431:9A-107(a)(1), (2), or (5), when the producer has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7; and
- (2) Submitted a completed license application on a form furnished by the commissioner."

SECTION 8. Section 431:9-222.5, Hawaii Revised Statutes, is amended to read as follows:

**"§431:9-222.5 [Workers' compensation claims] Claims adjusters; limited license.** (a) The commissioner may issue a limited license to an adjuster who only adjusts either workers' compensation or crop insurance claims; provided that the adjuster:

- (1) Is domiciled in the State of Hawaii, or in a state that permits residents of the State of Hawaii to act as adjusters in that other state;
- (2) Has had experience, special education, or training in handling loss claims under workers' compensation or crop insurance contracts of

sufficiently reasonable duration and extent to enable an individual to fulfill the responsibilities of an adjuster;

- (3) Has a passing grade on the workers' compensation or crop insurance examination pursuant to section 431:9-206; and

- (4) Pays the applicable fees.

(b) An adjuster with a limited license issued under this section may extend the license biennially upon successfully passing a reexamination [~~on workers' compensation~~]."

SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The required number of credit hours shall be as follows:

- (1) For a licensee authorized to sell lines of insurance in only one of the following groups:

(A) Life or accident and health or sickness; or

(B) Property, marine and transportation, vehicle, general casualty, or surety;

the requisite number of credit hours shall be ~~[twenty]~~ twenty-four credit hours, consisting of twenty-one credit hours relating to the line of authority for which the license is held~~[-including]~~ and three credit hours relating to ethics training or relating to the insurance laws and the insurance rules;

- (2) For a licensee with a license to sell lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be ~~[thirty]~~ twenty-four credit hours, [of which:] consisting of:

(A) ~~[Twelve]~~ Ten credit hours [shall relate] relating to paragraph (1) (A) [of which two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held; and];

(B) ~~[Eighteen]~~ Eleven credit hours [shall relate] relating to paragraph (1)(B) [of which two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held;] and

(C) Three credit hours relating to ethics training or to insurance laws and rules.

For purposes of this section, ethics training shall include but shall not be limited to the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement considerations, and conflicts of interest."

SECTION 10. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, every other rating rule, and every modification of any of the foregoing that it proposes to use; provided that filings with regard to specific inland marine risks, which by general custom of the business are not written according to manual rate or rating plans, and bail bonds, subject to section 804-62, shall not be required pursuant to this subsection.

Every filing shall:

- [1] ~~Consist of two printed copies and one copy filed by electronic, telephonic, or optical means;~~

- [2] (1) State its proposed effective date;

- [3] (2) Indicate the character and extent of the coverage contemplated;  
[and

- (4)] (3) Include a report on investment income[-]; and  
 (4) Be accompanied by a \$50 fee, payable to the commissioner, to be deposited in the commissioner's education and training fund.  
 (b) [Each filing shall be accompanied by a \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.] For each filing, an insurer shall submit to the commissioner:  
 (1) An electronic copy of the filing; or  
 (2) Two printed copies of the filing.  
The commissioner may also request a printed version of an electronic filing to be submitted pursuant to paragraph (1)."

SECTION 11. Section 431:14-105, Hawaii Revised Statutes, is amended to read as follows:

- "§431:14-105 Policy revisions that alter coverage.** (a) Any policy revisions that alter coverage in any manner shall be filed with the commissioner[-; consist of two printed copies and one copy by electronic, telephonic, or optical means,] and shall include an analysis of the impact of each revision on rates.  
 (b) A filing shall consist of either:  
 (1) An electronic copy of the filing; or  
 (2) Two printed copies of the filing.  
The commissioner may also request a printed version of an electronic filing to be submitted pursuant to paragraph (1).  
 (c) After review by the commissioner, the commissioner shall determine whether a rate filing for the policy revision must be submitted in accordance with section 431:14-104."

SECTION 12. By January 1, 2010, the insurance commissioner shall provide notice to the affected parties of the new continuing education requirements of section 431:9A-124, Hawaii Revised Statutes, as amended by section 9 of this Act.

## PART II

SECTION 13. Section 431:2-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- "(c) The commissioner may:
- (1) Make reasonable rules for effectuating any provision of this code, except those relating to the commissioner's appointment, qualifications, or compensation. The commissioner shall adopt rules to effectuate article 10C of chapter 431, subject to the approval of the governor's office and the requirements of chapter 91;
  - (2) Conduct examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any provision; ~~and~~
  - (3) Require applicants to provide fingerprints and pay a fee to allow the commissioner to make a determination of license eligibility after obtaining state and national criminal history record checks from the Hawaii criminal justice data center and the Federal Bureau of Investigation; and
  - (4) Require, upon reasonable notice, that insurers report any claims information the commissioner may deem necessary to protect the public interest."

SECTION 14. Section 431:2-209, Hawaii Revised Statutes, is amended to read as follows:

**“§431:2-209 Records and reports.** (a) The commissioner shall preserve in permanent form records and reports of the commissioner’s proceedings, hearings, investigations, and examinations, and shall file the records in the commissioner’s office.

(b) The records of the commissioner and insurance filings in the commissioner’s office shall be open to public inspection, except as otherwise provided in this code.

(c) One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, void or obsolete filings relating to rates, certificate of authority applications, self-insurance applications, registrations, foreign or alien insurers’ annual statements, valuation reports, certificates of compliance and deposits, cards, and expired bonds. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner’s possession.

(d) Three years after the year to which they relate, the commissioner may destroy any foreign or alien insurer’s tax reports, or similar records or reports now or hereafter in the commissioner’s possession.

(e) The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

- (1) Complaints and investigation reports;
  - (2) Working papers of examinations, complaints, and investigation reports;
  - (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing the information; and
  - (4) Any documents or information received from the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths that are confidential in other jurisdictions. The commissioner may share information, including otherwise confidential information, with the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths so long as the statutes or regulations of the other jurisdictions permit them to maintain the same level of confidentiality as required under Hawaii law.
- (f) The commissioner shall:
- (1) Treat and maintain an applicant’s fingerprints and any criminal history record information obtained under this code as confidential;
  - (2) Apply security measures consistent with the Federal Bureau of Investigation Criminal Justice Information Services Division’s standards for the electronic storage of fingerprints and necessary identifying information; and
  - (3) Limit the use of the records solely to purposes authorized by law.

Fingerprints and criminal history record information shall not be subject to subpoena, other than subpoenas issued in criminal actions or investigations, and shall be confidential by law and privileged and not subject to discovery or admissible in evidence in any private civil action.

[(f)] (g) The commissioner shall not disclose any information that is exempt from disclosure by federal or Hawaii statutes.”

SECTION 15. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance..... \$900
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing .....\$1,500
    - (B) Issuance of solicitation permit..... \$150
  - (3) Producer’s license:
    - (A) Issuance, regular license..... \$50
    - (B) Issuance, temporary license ..... \$50
  - (4) Nonresident producer’s license: Issuance ..... \$75
  - (5) Independent adjuster’s license: Issuance ..... \$75
  - (6) Public adjuster’s license: Issuance ..... \$75
  - (7) Workers’ compensation claim adjuster’s limited license: Issuance ..... \$75
  - (8) Independent bill reviewer’s license: Issuance ..... \$80
  - (9) Limited producer’s license: Issuance ..... \$60
  - (10) Managing general agent’s license: Issuance ..... \$75
  - (11) Reinsurance intermediary’s license: Issuance ..... \$75
  - (12) Surplus lines broker’s license: Issuance..... \$150
  - (13) Service contract provider’s registration: Issuance .... \$75
  - (14) Approved course provider certificate: Issuance .... \$100
  - (15) Approved continuing education course certificate: Issuance..... \$30
  - (16) Vehicle protection product warrantor’s registration: Issuance..... \$75
  - (17) Criminal history record check [.....\$20]; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
  - (18) Limited line motor vehicle rental company producer’s license: Issuance.....\$1,000
  - (19) Life settlement contract provider’s license: Issuance..... \$75
  - (20) Life settlement contract broker’s license: Issuance..... \$75
  - (21) Examination for license: For each examination, a fee to be established by the commissioner.”

SECTION 16. Section 431:9-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Application for any such license shall be made to the commissioner upon forms as prescribed and furnished by the commissioner. As a part of or in connection with any such application, the applicant shall furnish information ~~[concerning:]~~ including:

- (1) The applicant’s identity, personal history, experience, business ~~[record:]~~ records, and a full set of fingerprints, including a scanned

file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history records checks from the Federal Bureau of Investigation and the Hawaii criminal justice data center, pursuant to section 846-2.7; and

- (2) Other pertinent facts as the commissioner may reasonably require.”

SECTION 17. Section 431:9A-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person applying for an insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant’s knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431:9A-112;
- (3) Has paid the applicable [fee] fees set forth in section 431:7-101; [and]
- (4) Has passed, within the two years immediately preceding the date of the examination or issuance of the license, whichever is later, the applicable examination for each line of authority for which the applicant has applied[-]; and
- (5) Has submitted a full set of fingerprints, including a scanned file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history records checks from the Federal Bureau of Investigation and the Hawaii criminal justice data center, pursuant to section 846-2.7.”

SECTION 18. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;

- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;



- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (Title 42 United States Code Section 1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- [(27)] The department of commerce and consumer affairs on:
  - (A) Each principal of every non-corporate applicant for a money transmitter license; and
  - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9; ~~and~~
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24; and
- [(28)] (29) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

### PART III

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 2009; provided that:

- (1) Section 3 shall take effect on January 1, 2010;
- (2) Section 9 shall take effect on July 1, 2010; and
- (3) The amendments made to section 431:7-101(a), Hawaii Revised Statutes, in section 15 of this Act shall not be repealed when section 431:7-101(a), Hawaii Revised Statutes, is reenacted on June 16, 2010, pursuant to Act 177, Session Laws of Hawaii 2008.

(Approved May 28, 2009.)

A Bill for an Act Relating to the Statewide Traffic Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-134.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) ~~[A]n~~ Unless otherwise prohibited or regulated by a county ordinance, ~~an~~ electric personal assistive mobility device may be operated on ~~[the]~~ sidewalks, at a speed no greater than eight miles per hour, and bicycle paths of the State. The sale of consumer models of electric personal assistive mobility devices in the State shall be limited to those models operated by a key that can set the maximum forward speed at no more than eight miles per hour."

SECTION 2. Section 291C-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

- (1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;
- (2) Regulating traffic by means of police officers or official traffic-control devices;
- (3) Regulating or prohibiting processions or assemblages on the highways;
- (4) Designating particular highways or roadways for use by traffic moving in one direction;
- (5) Establishing speed limits for vehicles in public parks;
- (6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;
- (7) Restricting the use of highways;
- (8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;
- (9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (10) Altering or establishing speed limits;
- (11) Requiring written accident reports;
- (12) Designating no-passing zones;
- (13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;
- (14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (15) Establishing minimum speed limits;
- (16) Designating hazardous railroad grade crossing;
- (17) Designating and regulating traffic on play streets;
- (18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;
- (19) Restricting pedestrian crossing at unmarked crosswalks;
- (20) Regulating persons propelling push carts;
- (21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;
- (22) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;

- (23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;
- (24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;
- (25) Prohibiting or regulating electric personal assistive mobility devices on sidewalks and bicycle paths; and
- [(25)] (26) Adopting such other traffic regulations as are specifically authorized by this chapter.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 28, 2009.)

## ACT 79

S.B. NO. 884

A Bill for an Act Relating to Non-General Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Many unprecedented events have converged to create an economic, financial, and fiscal environment that threatens the very foundation of our national economy. Problems that arose in the national housing sector and sub-prime mortgage market last year have radiated from Wall Street to Main Street. Across the United States, the result has been increasing business bankruptcies and closures, lower consumer confidence and spending, and job losses and rising unemployment.

For state governments, the financial crisis and economic downturn have adversely impacted tax revenues and budgets. Most states, like Hawaii, rely on income and sales taxes as their main sources of revenues. The slowdown in employment and consumer spending has reduced state revenues nationwide at a time when operating costs continue to rise.

Hawaii is experiencing a severe contraction in its visitor, retail, and construction industries. As a consequence, the council on revenues has lowered its revenue projections five times during 2008 and, twice more during the first half of 2009. The cumulative effect of these successive reductions in revenue estimates for fiscal years 2008-2009, 2009-2010, and 2010-2011 is a substantial decrease in the amount of general funds that the State can expect in the immediate and near future. Given the level of spending and the anticipated rising cost of state operations, a \$2,100,000,000 general fund budget shortfall is projected by the end of fiscal year 2010-2011 if corrective action is not taken.

The legislature finds that due to the extraordinary fiscal crisis the State faces, non-general funds must be reviewed and scrutinized to determine if excess balances are available. The legislature further finds that transfers of excess balances are needed to help address the critical budget shortfall in fiscal biennium 2009-2011.

SECTION 2. Section 138-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§138-3]]~~ **Wireless enhanced 911 fund.** There is established outside the state treasury a special fund, to be known as the wireless enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. ~~[Moneys paid into the fund are not general fund revenues of the State.]~~ The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service and for expenses of administering the fund. Any funds that accumulate in the wireless enhanced 911 fund shall be retained in the fund unless determined by the legislature to be in excess.”

SECTION 3. Section 342G-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any funds that accumulate in the deposit beverage container deposit special fund shall be retained in the fund unless determined by the ~~[auditor]~~ legislature to be in excess~~], after adjustments to the deposit beverage fee, pursuant to the management and financial audits conducted in accordance with section 342G-107].”~~

SECTION 4. The legislature determines that there is in the wireless enhanced 911 fund at least \$16,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the wireless enhanced 911 fund to the general fund the sum of \$16,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

## PART II

SECTION 5. The legislature finds that section 37-53, Hawaii Revised Statutes, provides the governor nearly unlimited authority to transfer non-general funds to the general fund. Section 37-53 provides that:

At any time during a fiscal year, notwithstanding any other law to the contrary, any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from any special fund relating to such department to the general revenues of the State all or any portion of moneys determined to be in excess of fiscal year requirements for such special fund, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities, special funds under the control of the Hawaii health systems corporation or subaccounts under the control of its regional system boards, and special funds of the University of Hawaii. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any special fund under the control of the department of transportation, or from any account within any such special fund, to the general revenues of the State or to any other special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months determined as prescribed by rules adopted pursuant to chapter 91; provided that no such transfer shall be made which would cause a violation of federal law or federal grant agreements.

This part mandates the transfer of non-general funds to the general fund.

SECTION 6. The legislature determines that there is in the agricultural loan reserve fund at least \$500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 7. The legislature determines that there is in the agricultural loan revolving fund at least \$5,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the agricultural loan revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 8. The legislature determines that there is in the state risk management revolving fund at least \$5,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the state risk management revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 9. The legislature determines that there is in the stadium special fund at least \$1,500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 10. The legislature determines that there is in the medicaid investigations recovery fund at least \$1,500,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 11. The legislature determines that there is in the state identification revolving fund at least \$700,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 12. The legislature determines that there is in the hydrogen investment capital special fund at least \$2,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the hydrogen investment capital special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 13. The legislature determines that there is in the housing finance revolving fund at least \$20,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the housing finance revolving fund to the general fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 14. The legislature determines that there is in the compliance resolution fund at least \$3,300,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$3,300,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 15. The legislature determines that there is in the drug demand reduction assessments special fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the drug demand reduction assessments special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 16. The legislature determines that there is in the Hawaii tobacco settlement special fund at least \$20,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the Hawaii tobacco settlement special fund to the general fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 17. The legislature determines that there is in the neurotrauma special fund at least \$750,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the neurotrauma special fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 18. The legislature determines that there is in the emergency medical services special fund at least \$4,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the emergency medical services special fund to the general fund the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 19. The legislature determines that there is in the environmental management special fund at least \$2,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the environmental management special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 20. The legislature determines that there is in the judiciary computer system special fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the judiciary computer system special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 21. The legislature determines that there is in the special fund for disability benefits at least \$7,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the special fund for disability benefits to the general fund the sum of \$7,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 22. The legislature determines that there is in the special land and development fund at least \$1,000,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 23. The legislature determines that there is in the dwelling unit revolving fund at least \$600,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2008-2009.

SECTION 24. The legislature determines that there is in the University of Hawaii research and training revolving fund at least \$5,100,000 in excess of the requirements of the fund. On June 1, 2009, the director of finance is authorized to transfer from the University of Hawaii research and training revolving fund to the general fund the sum of \$5,100,000 or so much thereof as may be necessary for fiscal year 2008-2009.

### PART III

SECTION 25. The purpose of this part is to repeal the provisions that exempt certain special funds from assessments for central service and departmental administrative expenses.

SECTION 26. Section 21D-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The Hawaii legislative publications special fund shall not be subject to section ~~[36-27, 36-30, or]~~ 37-53.”

SECTION 27. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130(f);
- (18) Sport fish special fund under section 187A-9.5;
- ~~(19) Neurotrauma special fund under section 321H-4;~~
- ~~(20) Deposit beverage container deposit special fund under section 342G-104;~~
- (21) (19) Glass advance disposal fee special fund established by section 342G-82;

- ~~[(22)]~~ (20) Center for nursing special fund under section 304A-2163;
- ~~[(23)]~~ (21) Passenger facility charge special fund established by section 261-5.5;
- ~~[(24)]~~ Solicitation of funds for charitable purposes special fund established by section 467B-15;
- ~~(25)~~ Land conservation fund established by section 173A-5;
- ~~[(26)]~~ (22) Court interpreting services revolving fund under section 607-1.5;
- ~~[(27)]~~ Trauma system special fund under section 321-22.5;
- ~~(28)~~ (23) Hawaii cancer research special fund;
- ~~[(29)]~~ (24) Community health centers special fund;
- ~~[(30)]~~ (25) Emergency medical services special fund; and
- ~~[(31)]~~ (26) Rental motor vehicle customer facility charge special fund established under section 261-5.6[;].

shall deduct five per cent of all receipts of all ~~[other]~~ special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 28. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Funds of the employees' retirement system created by section 88-109;
  - (9) Unemployment compensation fund established under section 383-121;
  - (10) Hawaii hurricane relief fund established under ~~[chapter 431P;]~~ section 431P-2;
  - (11) Convention enter<sup>l</sup> enterprise special fund established under section 201B-8;
  - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
  - (13) Tourism special fund established under section 201B-11;
  - (14) Universal service fund established under chapter 269;
  - (15) Emergency and budget reserve fund under section 328L-3;
  - (16) Public schools special fees and charges fund under section 302A-1130(f);
  - (17) Sport fish special fund under section 187A-9.5;
  - ~~[(18)]~~ Neurotrauma special fund under section 321H-4;
  - ~~[(19)]~~ (18) Center for nursing special fund under section 304A-2163;



- [(20)] (19) Passenger facility charge special fund established by section 261-5.5;
- [(21)] (20) Court interpreting services revolving fund under section 607-1.5;
- [(22)] (21) Trauma system special fund under section 321-22.5;
- [(23)] (22) Hawaii cancer research special fund;
- [(24)] (23) Community health centers special fund;
- [(25)] (24) Emergency medical services special fund; and
- [(26)] (25) Rental motor vehicle customer facility charge special fund established under section 261-5.6,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

## PART IV

SECTION 29. The purpose of this part is to provide for the temporary transfer into the general fund of interest earned on short-term investment or deposit of moneys of certain special funds, revolving funds, and special accounts.

This part does not require the temporary transfer of any fee or user charge collected from a beneficiary of a state service. It only provides for the temporary transfer of interest earned on the unexpended fee or charge. Thus, the legislature intends that this part be in conformance with state judicial interpretation concerning the proper use of the proceeds from a fee or user charge established by a state agency.

SECTION 30. (a) Notwithstanding any other law to the contrary, from July 1, 2009, until June 30, 2015, the director of finance may deposit into the general fund the interest earned on the short-term investment of moneys of the special funds, revolving funds, and special accounts listed in this section. For purposes of this section, “short-term investment” means an investment made by the director of finance in accordance with section 36-21, Hawaii Revised Statutes.

This subsection shall be applicable to the following special funds, revolving funds, and special accounts:

- (1) Tobacco enforcement special fund—section 28-15, Hawaii Revised Statutes;
- (2) Environmental response revolving fund—section 128D-2, Hawaii Revised Statutes;
- (3) Special land and development fund—section 171-19, Hawaii Revised Statutes;
- (4) Beach restoration special fund—section 171-156, Hawaii Revised Statutes;
- (5) Land conservation fund—section 173A-5, Hawaii Revised Statutes;
- (6) Dam and reservoir safety special fund—section 179D-25, Hawaii Revised Statutes;
- (7) State parks special fund—section 184-3.4, Hawaii Revised Statutes;
- (8) Firefighter’s contingency fund—section 185-4(d), Hawaii Revised Statutes;
- (9) Commercial fisheries special fund—section 189-2.4, Hawaii Revised Statutes;
- (10) Natural area reserve fund—section 195-9, Hawaii Revised Statutes;
- (11) Forest stewardship fund—section 195F-4, Hawaii Revised Statutes;

- (12) Housing finance revolving fund—section 201H-80, Hawaii Revised Statutes;
- (13) Rental assistance revolving fund—section 201H-123, Hawaii Revised Statutes;
- (14) Dwelling unit revolving fund—section 201H-191, Hawaii Revised Statutes;
- (15) Rental motor vehicle customer facility charge special fund—section 261-5.6, Hawaii Revised Statutes;
- (16) Education research and development revolving fund—section 302A-305, Hawaii Revised Statutes;
- (17) School bus fare revolving fund—section 302A-407.5, Hawaii Revised Statutes;
- (18) Hawaii teacher standards board special fund—section 302A-806, Hawaii Revised Statutes;
- (19) Textbook and instructional materials fee special account—section 302A-1130.6, Hawaii Revised Statutes;
- (20) After-school plus program revolving fund—section 302A-1149.5, Hawaii Revised Statutes;
- (21) Food distribution program revolving fund—section 302A-1315, Hawaii Revised Statutes;
- (22) Federal grants search, development, and application revolving fund—section 302A-1405, Hawaii Revised Statutes;
- (23) School-level minor repairs and maintenance special fund—section 302A-1504.5, Hawaii Revised Statutes;
- (24) Domestic violence and sexual assault special fund—section 321-1.3, Hawaii Revised Statutes;
- (25) Early intervention special fund—section 321-355, Hawaii Revised Statutes;
- (26) Public health nursing services special fund—section 321-432, Hawaii Revised Statutes;
- (27) Neurotrauma special fund—section 321H-4, Hawaii Revised Statutes;
- (28) State health planning and development special fund—section 323D-12.6, Hawaii Revised Statutes;
- (29) Hawaii tobacco settlement special fund—section 328L-2, Hawaii Revised Statutes;
- (30) Vital statistics improvement special fund—section 338-14.6, Hawaii Revised Statutes;
- (31) Wastewater treatment certification board special fund—section 340B-3.5, Hawaii Revised Statutes;
- (32) Deposit beverage container deposit special fund—section 342G-104, Hawaii Revised Statutes;
- (33) Leaking underground storage tank fund—section 342L-51, Hawaii Revised Statutes;
- (34) Correctional industries revolving fund—section 354D-10, Hawaii Revised Statutes;
- (35) Employment and training fund—section 383-128, Hawaii Revised Statutes;
- (36) Hoisting machine operators' certification revolving fund—section 396-20, Hawaii Revised Statutes;
- (37) Notaries public revolving fund—section 456-9.5, Hawaii Revised Statutes;
- (38) Solicitation of funds for charitable purposes special fund—section 467B-15, Hawaii Revised Statutes;

- (39) Bureau of conveyances special fund—section 502-8, Hawaii Revised Statutes;
- (40) Drug demand reduction assessments special fund—section 706-650, Hawaii Revised Statutes;
- (41) Criminal forfeiture fund—section 712A-16, Hawaii Revised Statutes;
- (42) Criminal history record improvement revolving fund—section 846-10.6, Hawaii Revised Statutes; and
- (43) State identification revolving fund—section 846-27, Hawaii Revised Statutes.

(b) Notwithstanding any other law to the contrary, from July 1, 2009, until June 30, 2015, the chief justice may transfer to the director of finance any interest earned on the short-term investment by the judiciary of moneys of the following special and revolving funds. Upon receipt, the director of finance shall deposit the moneys in the general fund.

The special and revolving funds, to which this subsection is applicable, shall be the following:

- (1) Supreme court law library revolving fund—section 601-3.5, Hawaii Revised Statutes; and
- (2) Judiciary computer system special fund—section 601-3.7, Hawaii Revised Statutes.

SECTION 31. Section 36-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of finance may invest any moneys of the State which in the director’s judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director’s judgment the action will not impede or hamper the necessary financial operations of the State in:

- (1) Any bonds or interest-bearing notes or obligations:
  - (A) Of the State (including state director of finance’s warrant notes issued pursuant to chapter 40);
  - (B) Of the United States;
  - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
- (2) Federal Farm Credit System notes and bonds;
- (3) Federal Agricultural Mortgage Corporation notes and bonds;
- (4) Federal Home Loan Bank notes and bonds;
- (5) Federal Home Loan Mortgage Corporation bonds;
- (6) Federal National Mortgage Association notes and bonds;
- (7) Student Loan Marketing Association notes and bonds;
- (8) Tennessee Valley Authority notes and bonds;
- (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof or repurchase agreements fully collateralized by any such bonds or securities;
- (10) Securities of a money market mutual fund that is rated AAA, or its equivalent, by a nationally recognized rating agency or whose portfolio consists of securities that are rated as first tier securities by a nationally recognized statistical rating organization as provided in 17 Code of Federal Regulations ~~[section]~~ Section 270.2a-7;
- (11) Federally insured savings accounts;
- (12) Time certificates of deposit;
- (13) Certificates of deposit open account;

- (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
- (15) Student loan resource securities including:
  - (A) Student loan auction rate securities;
  - (B) Student loan asset-backed notes;
  - (C) Student loan program revenue notes and bonds; and
  - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues; issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
- (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
- (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that the investments are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that, except as provided by Act , Session Laws of Hawaii 2009, income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation."

## PART V

SECTION 32. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 33. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 34. This Act shall take effect upon its approval; provided that:

- (1) Part I shall take effect on June 1, 2009;
- (2) Part II shall take effect on June 1, 2009;
- (3) Part III shall take effect on July 1, 2009, and shall be repealed on June 30, 2015; provided that sections 21D-5, 36-27, 36-30, 201-85, 304A-3005, 342D-82, and 261D-3, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2009; and
- (4) Part IV shall take effect on July 1, 2009, and shall be repealed on July 1, 2015; provided that section 36-21, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009.

(Approved May 28, 2009.)

### Note

1. So in original.

## ACT 80

S.B. NO. 1223

A Bill for an Act Relating to Hawaii Made Products.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 486-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Craft item” means any consumer commodity that is not an agricultural commodity or a perishable consumer commodity that is manufactured, assembled, fabricated, or produced by an individual working alone or a small group of individuals working collaboratively and that is produced by hand or by using simple tools. Craft item does not include a consumer commodity that is mass-produced or an item that is merely assembled from two or more mass-produced consumer commodities.

“Perishable consumer commodity” means any article, product, good, or agricultural commodity of any kind that is customarily produced or distributed for sale through mercantile or retail sales outlets; is intended for consumption as food or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions; and is intended to have a limited shelf life. “Perishable consumer commodity” includes, but is not limited to, baked goods, dairy products, cut or dried flowers, coffee, candy, cookies, jam, jelly, juices, oils, nuts, or similar products.”

SECTION 2. Section 486-119, Hawaii Revised Statutes, is amended to read as follows:

**“[§486-119] Hawaii-made products[-]; Hawaii-processed products. (a)** No person shall keep, offer, display [ø], expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise [which] that is labeled “Made in Hawaii” “made in Hawaii” or [which] that by any other means misrepresents the origin of the item as being from any place within the State, [which] or uses the phrase “made in Hawaii” as an advertising or media tool for any craft item that has not been manufactured, assembled, fabricated, or produced within the State and [which] that has not had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State.

(b) Subsection (a) notwithstanding, no person shall keep, offer, display, expose for sale, or solicit the sale of any perishable consumer commodity that is labeled “made in Hawaii”, “produced in Hawaii”, or “processed in Hawaii” or that by any other means represents the origin of the perishable consumer commodity as being from any place within the State, or use the phrase “made in Hawaii”, “produced in Hawaii”, or “processed in Hawaii” as an advertising or media tool for any perishable consumer commodity, unless the perishable consumer commodity is wholly or partially manufactured, processed, or produced within the State from raw materials that originate from inside or outside the State and at least fifty-one per cent of the wholesale value of the perishable consumer commodity is added by manufacture, processing, or production within the State.”

SECTION 3. The chair of the board of agriculture shall convene a working group composed of:

- (1) A representative of the department of business, economic development, and tourism;

- (2) Representatives of native Hawaiian artisans;
- (3) Representatives of artisan and handcrafters guilds or collectives such as Creations of Hawaii and the Made in Hawaii Festival;
- (5)<sup>1</sup> Retail merchants of handcrafted goods;
- (6)<sup>1</sup> A representative of Hawaii Farm Bureau Federation;
- (7)<sup>1</sup> A representative of Hawaii Food Manufacturers Association; and
- (8)<sup>1</sup> A representative of Hawaii Food Industry Association.

The purpose of the working group shall be to identify labeling issues relating to the Hawaii-made products law and to propose workable solutions, including solutions for enforcement.

The working group shall submit a report of its findings to the legislature no later than twenty days prior to the convening of the 2010 regular session.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 1, 2009.)

**Note**

1. So in original.

**ACT 81**

H.B. NO. 1040

A Bill for an Act Relating to Tort Liability.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The liability protections afforded to lifeguards in Act 170, Session Laws of Hawaii 2002 (Act 170), will sunset on June 30, 2010. Act 170 provides liability protection for lifeguard services on the beach or in the ocean, except for gross negligence or wanton acts or omissions. This limited liability protection was made necessary because some counties would not provide lifeguard services at state beach parks, due to the fear of potential liability that might ensue. The legislature finds that Act 170 created a climate in which lifeguard services could be provided by the counties without fear of liability, and, therefore, is a life-saving measure that should be extended.

The purpose of this part is to extend the liability protections for lifeguard services.

SECTION 2. Act 170, Session Laws of Hawaii 2002, as amended by section 4 of Act 152, Session Laws of Hawaii 2007, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, ~~[2010.]~~ 2014.”

PART II

SECTION 3. Act 82, Session Laws of Hawaii 2003, as amended by section 5 of Act 152, Session Laws of Hawaii 2007, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take ~~[affect]~~ effect on July 1, 2003, and shall be repealed on June 30, ~~[2010-]~~ 2014.”

PART III

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 1, 2009.)

ACT 82

S.B. NO. 714

A Bill for an Act Relating to High Occupancy Vehicle Lanes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii’s highways are necessary for our people’s transportation. Increased travel time decreases time at home or at work, reducing people’s quality of life and work effectiveness. As the population grows, especially on the west side of Oahu, the need for travel lanes will only increase.

High occupancy vehicle lanes and zipper lanes provide an incentive to carpool, effectively reducing the number of cars on the road. However, many incidents, including accidents, car crashes, and stalled vehicles, cause lane closures. This reduction in available travel lanes slows traffic significantly. Studies have shown that for each minute an incident remains in a lane, the backlog of traffic increases by ten minutes. Therefore, allowing the use of the high occupancy vehicle lanes and zipper lanes by any motor vehicle, regardless of the number of passengers, when an incident occurs would be the most effective use of lanes for all citizens.

The purpose of this Act is to mitigate traffic and ensure the most effective use of all travel lanes.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- High occupancy vehicle lanes; emergencies.** (a) Notwithstanding any law to the contrary, when a roadway includes one or more lanes for traffic moving in the same direction that include a high occupancy vehicle lane or zipper lane, and at least one lane other than a high occupancy vehicle lane or zipper lane is closed by law enforcement officers or emergency services personnel because of a traffic incident or accident, any motor vehicle, regardless of the number of persons carried, that can safely enter the high occupancy vehicle lane or zipper lane shall, subject to subsection (b), be allowed to use the high occupancy vehicle lane or zipper lane.

(b) For the purposes of subsection (a), the director of transportation shall have the authority to declare an emergency to open the use of high occupancy

vehicle lanes and zipper lanes to all motor vehicles regardless of the number of persons carried.

(c) For the purposes of this section:

“Accident” means an unplanned event involving a motor vehicle, resulting in damage to one or more motor vehicles, property damage, or personal injury.

“Incident” includes any accident or issue that disrupts the flow of traffic.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved June 1, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 83

S.B. NO. 711

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Length:

- (1) No single motor vehicle or other power vehicle having a total overall length greater than forty-five feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as provided in this subsection;
- (2) No truck-tractor and semitrailer having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway, other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as provided in this subsection; provided that:
  - (A) For truck-tractors and semitrailers used for agricultural purposes~~;~~ and public utilities maintenance and service vehicles, ~~[or articulated buses for public transit purposes;]~~ the total combined length of the truck-tractor and semitrailer~~;~~ or public utility maintenance and service vehicle~~;~~ or articulated bus] shall not exceed sixty-five feet in length; ~~and]~~
  - (B) The length of the semitrailer shall not exceed forty-eight feet in length; and
  - (C) The length of an articulated bus for public transit purposes shall not exceed eighty-two feet in length, and shall not consist of more than three units;
- (3) No combination of motor vehicles or other power vehicles coupled together shall consist of more than two units and no ~~[such]~~ combination of vehicles having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway other than interstate highways and



certain qualifying federal aid highways as designated by the director of transportation, within the State, except as provided in this subsection. A truck-tractor and semitrailer shall be regarded as a single unit when determining the number of units in a combination;

- (4) No motor vehicle, self-propelled construction or farm equipment, trailer, or semitrailer shall be operated upon any public road, street, or highway within the State if it is carrying or otherwise has projecting to the front or rear, a load, boom, mast, or other projecting structure or attachment unless:
  - (A) With respect to self-propelled construction or farm equipment:
    - (i) The length of the equipment measured on a horizontal axis, including the projection, is not greater than forty-five feet;
    - (ii) The projection is either held securely in place or is controlled by the driver or an operator;
    - (iii) The projection does not obstruct the driver's vision;
    - (iv) The projection does not impair the driver's ability to control the equipment;
    - (v) The projection beyond the front tires is at least seven feet above the roadway surface; and
    - (vi) The projection does not extend more than four feet past the extremity of the piece of equipment, or if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection; or
  - (B) With respect to a motor vehicle, or a motor vehicle with attached trailer or semitrailer:
    - (i) The overall length of a motor vehicle including the projection, is not greater than forty-five feet or the overall length of the motor vehicle with attached trailer or semitrailer, including the projection, is not greater than sixty feet except that this limitation on a motor vehicle with attached trailer or semitrailer, including the projection, shall not be applicable on interstate highways and certain qualifying federal aid highways, as designated by the director of transportation;
    - (ii) The projection is either held securely in place or is controlled by the driver or an operator;
    - (iii) The projection does not obstruct the driver's vision;
    - (iv) The projection does not impair the driver's ability to control the equipment;
    - (v) The projection beyond the front tires is at least seven feet above the roadway surface; and
    - (vi) The projection does not extend more than four feet past the extremity of the trailer or semitrailer, or, if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection;
- (5) The limitations in this subsection upon length shall not apply to vehicles transporting pipe, poles, timbers, reinforcing steel, structural steel, or other objects of a structural nature ~~which~~ that cannot be readily dismembered; provided that when transported by night every ~~such~~ vehicle shall be equipped with a sufficient number of

clearance lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 2009.)

## ACT 84

H.B. NO. 35

A Bill for an Act Relating to Income Tax Credit.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that article VII, section 6, of the Hawaii Constitution requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met for the second year in a row and that the legislature is constitutionally required to provide a tax credit or tax refund to taxpayers.

The purpose of this Act is to provide for an income tax credit of \$1 multiplied by the number of the taxpayer's qualified exemptions to every resident individual taxpayer of the state to satisfy constitutionally mandated requirements.

SECTION 2. (a) There shall be allowed to each resident individual taxpayer, who files an individual income tax return for the taxable year 2009, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, a general income tax credit of \$1 that shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes; provided that a resident individual who has no income or no income taxable under chapter 235, Hawaii Revised Statutes, and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes, may claim this credit.

Each resident individual taxpayer may claim the general income tax credit multiplied by the number of qualified exemptions to which the taxpayer is entitled.

Each person for whom the general income tax credit is claimed shall have been a resident of the state, as defined in section 235-1, Hawaii Revised Statutes, for at least nine months regardless of whether the qualified resident was physically in the state for nine months. Multiple exemptions shall not be granted for the general income tax credit because of age or deficiencies in vision, hearing, or other disability.

The general income tax credit shall not be available to:

- (1) Any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year;
- (2) Any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or
- (3) Any misdemeanor who has been committed to jail and has been physically confined for the full taxable year.

The tax credit claimed by a resident taxpayer pursuant to this Act shall be deductible from the resident taxpayer's individual income tax liability for the taxable year 2009. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that a tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

All claims for tax credits under this Act, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with this filing requirement shall constitute a waiver of the right to claim the credit.

(b) This section implements the provisions of article VII, section 6, of the Hawaii Constitution, proposed by the 1978 constitutional convention, and enacted by the voters on November 7, 1978, which reads as follows:

**"DISPOSITION OF EXCESS REVENUES**

**Section 6.** Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law."

**SECTION 3.** This Act shall take effect upon its approval.

(Approved June 2, 2009.)

**ACT 85**

H.B. NO. 1536

A Bill for an Act Relating to Salaries.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The downturn in the United States and global economy caused by the credit crisis, volatility in the mortgage and financial-securities markets, fluctuations in oil prices, and the resulting uncertainty has affected Hawaii and its people. Unemployment has risen, and additional declines in tourism and retail sales are anticipated.

The State is facing a projected \$1,100,000,000 budget shortfall for the balance of fiscal year 2009 and the biennium.

The purpose of this Act is to reduce the salaries and leaves of absence of certain members of the executive, legislative, and judicial branches of the State in recognition of the current fiscal situation and to lead by example in demonstrating to the people of Hawaii that public officials are doing their share to conserve scarce public resources.

**SECTION 2.** (a) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries for salary increases, beginning July 1, 2009, and until June 30, 2011, the annual salaries of the governor, the lieutenant governor, the justices and judges of all state courts, the administrative director of the State or an equivalent position, and the department heads or executive officers and the deputies or assistants to the department heads or executive officers of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;

- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation,

shall be reduced by five per cent from what the salary is as of June 30, 2009, and shall remain at that salary rate until June 30, 2011; provided that on July 1, 2011, the salaries of these positions shall be restored to the level they would have been on July 1, 2009, without the salary decrease under this Act; provided further that the recommendations of the commission on salaries for salary increases for these positions effective July 1, 2012, shall become effective on that date in accordance with the recommendations.

(b) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries for salary increases, beginning July 1, 2009, and until June 30, 2011, the annual salaries of members of the legislature shall be reduced by five per cent from what the salary is as of June 30, 2009; provided that on July 1, 2011, the salaries of the legislators shall be restored to the level it would have been on July 1, 2009, without the salary decrease under this Act; provided further that the recommendations of the commission on salaries for salary increases for legislators effective January 1, 2012, shall become effective on that date in accordance with the recommendations.

(c) For the period from July 1, 2009, to July 1, 2011, notwithstanding any law to the contrary, the leaves of absence for vacation and sick leave, with pay, of persons affected under subsection (a) and (b) shall be the same as those negotiated, mediated, or arbitrated under chapter 89, Hawaii Revised Statutes, for collective bargaining unit (13); provided that on July 1, 2011, the leaves of absence under this subsection shall be restored to the level they would have been on July 1, 2009, but for this subsection.

(d) This section shall not be construed to impart any right to additional compensation previously authorized through the adoption of the commission on salaries' recommendations for:

- (1) The period from January 1, 2009, through July 1, 2011, for positions covered under subsection (a); and
- (2) The period from January 1, 2009, through December 31, 2011, for positions covered under subsection (b).

(e) This section shall not be enforced to the extent that it is preempted by federal law.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 2009.)

## ACT 86

S.B. NO. 496

A Bill for an Act Relating to Charter Schools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, pursuant to Act 115, Session Laws of Hawaii 2007, the legislature sought to improve the public charter school system by clarifying the functions, duties, and roles of the charter school review panel and the board of education in the administration and operations of charter schools in the State. The legislature further finds that although the changes made were important and effective in assisting in charter schools administration, additional reform is necessary to allow charter schools in the State to continue to strive for excellence through effective and efficient operations.

The purpose of this Act is to make clarifying amendments to charter school administration, including among other things:

- (1) Clarifying that the charter school review panel is subject to the requirements of the sunshine law;
- (2) Authorizing the board of education to remove a charter school review panel member for cause;
- (3) Requiring the charter school review panel to approve the charter schools budget;
- (4) Requiring the charter school review panel to survey all charter school facilities prior to determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs;
- (5) Specifying the duties of the executive director of the charter school administrative office with regard to the preparation of the budget;
- (6) Changing the requirements for the per-pupil funding;
- (7) Requiring the charter school review panel to evaluate a charter school on its fourth anniversary and every five years after; and
- (8) Requiring the charter school review panel to establish criteria and an approval process for the development and submission of a capital improvement projects budget for charter school facilities.

SECTION 2. Section 302B-1, Hawaii Revised Statutes, is amended by amending the definition of "local school board" to read as follows:

""Local school board" means the autonomous governing body of a charter school that ~~receives~~:

- (1) Receives the charter and is responsible for the financial and academic viability of the charter school and implementation of the charter[~~;~~  
~~possesses~~];
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws[~~;~~~~and~~ has];  
and
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees."

SECTION 3. Section 302B-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There is established the charter school review panel, ~~[which]~~ that shall be placed within the department for administrative purposes only. The

panel shall be accountable to the charter schools and the board. Notwithstanding section 302B-9[;] and any other law to the contrary, the panel shall be subject to chapter 92.”

2. By amending subsection (e) to read:

“(e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, through non-participation, [~~or~~] upon request of a majority of panel members[;], or upon termination by the board for cause.”

3. By amending subsection (i) to read:

“(i) The powers and duties of the panel shall be to:

- (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;
- (2) Review, approve, or deny charter applications for new charter schools in accordance with section 302B-5 for the issuance of new charters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;
- (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school’s financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
- (4) Adopt reporting requirements for charter schools;
- (5) Review annual self-evaluation reports from charter schools and take appropriate action;
- (6) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include probation or revocation;
- (7) Periodically adopt improvements in the panel’s monitoring and oversight of charter schools; [~~and~~]
- (8) Periodically adopt improvements in the office’s support of charter schools and management of the charter school system[;];
- (9) Review, modify, and approve charter schools’ all means of finance budget, based upon criteria and an approval process established by the panel; and
- (10) Survey all charter school facilities prior to, and in preparation for, determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs. The survey shall include, at minimum, for each charter school facility:
  - (A) The current status of the facility;
  - (B) Facilities costs, including all rents, leases, purchases, and repair and maintenance for lands and buildings;
  - (C) A prioritized list of facilities needs;
  - (D) Any capital improvement projects underway or scheduled;  
and
  - (E) Whether the facility is a conversion or start-up charter school, and current and projected enrollment.”

SECTION 4. Section 302B-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The executive director, under the direction of the panel and in consultation with the charter schools, shall be responsible for the internal organization, operation, and management of the charter school system, including:

- (1) Preparing and executing the budget and the capital improvement projects request for the charter schools, including submission of the all means of finance budget request that reflects all anticipated expenditures to the panel, the board, the governor, and the legislature; provided that, in preparing the budget request with regard to facilities funding, the executive director shall ensure that, as a budget item separate from other operating costs, the request provides:
  - (A) Funding for projected enrollment for the next school year for each charter school;
  - (B) A calculation showing the per-pupil funding based on the department of budget and finance’s debt service appropriation for the department of education divided by the department of education’s actual enrollment that school year; and
  - (C) That no less than seventy per cent of the amount appropriated shall be allocated by the office to start-up charter schools on a per-pupil basis; provided that the funds remaining shall be allocated to charter schools with facilities needs as recommended by the office and approved by the panel;
- (2) Allocating annual appropriations to the charter schools and distribution of federal funds to charter schools;
- (3) Complying with applicable state laws related to the administration of the charter schools;
- (4) Preparing contracts between the charter schools and the department for centralized services to be provided by the department;
- (5) Preparing contracts between the charter schools and other state agencies for financial or personnel services to be provided by the agencies to the charter schools;
- (6) Providing independent analysis and recommendations on charter school issues;
- (7) Representing charter schools and the charter school system in communications with the board, the governor, and the legislature;
- (8) Providing advocacy, assistance, and support for the development, growth, progress, and success of charter schools and the charter school system;
- (9) Providing guidance and assistance to charter applicants and charter schools to enhance the completeness and accuracy of information for panel review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the panel as needed;
- (11) Assisting the panel to coordinate with charter schools in panel investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the panel, the board, and the department to all charter schools;
- (13) Determining charter school system needs and communicating those needs to the panel, the board, and the department;
- (14) Establishing a dispute resolution and mediation process; and
- (15) Upon request by one or more charter schools, assisting in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.”

2. By amending subsection (d) to read:

“(d) The salary of the executive director and staff shall be set by the panel based upon the recommendations of charter schools within the State; provided that the salaries and operational expenses of the office shall be paid from the annual charter school appropriation and shall not exceed two per cent of the total general fund allocation [in any fiscal year.] at an amount to be determined annually by the panel.”

SECTION 5. Section 302B-12, Hawaii Revised Statutes, is amended to read as follows:

**“§302B-12 Funding and finance.** (a) Beginning with fiscal year [2006-2007,] 2009-2010, and each fiscal year thereafter, ~~[the office shall submit a request for general fund appropriations for each charter school based upon:] the non-facility per-pupil funding request for charter school students shall not be less than the per-pupil amount to the department in the most recently approved executive budget recommendation for the department, as set forth in paragraph (2); provided that:~~

- (1) ~~The [actual and] per-pupil funding request shall include funding for projected enrollment figures [in the current school year] for each charter school; and~~
- (2) ~~[A] The per-pupil [amount] request for each regular education and special education student[, which shall be equivalent to the total per-pupil cost based upon average enrollment in] shall:~~
  - (A) Include all regular education cost categories, including comprehensive school support services, but excluding special education services[, and for]; provided that special education services are provided and funded by the department;
  - (B) Include all means of financing except federal funds, as reported in the most recently-approved executive budget recommendations for the department; provided that in preparing the budget the executive director shall include an analysis of the proposed budget in relationship to the most recently published department consolidated annual financial report[; provided further that the legislature may make an adjustment to the per-pupil allocation for the purposes of this section]; and
  - (C) Exclude fringe benefit costs and debt service.

~~[(3) Those fringe] (b) Fringe benefit costs [requested] for charter school employees, regardless of the payroll system utilized by a charter school, shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations [unless they are already included in the funds distributed to the charter school].~~

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for fringe, workers' compensation, and other employee benefits[; and facility costs[; and]. The legislature may make additional appropriations for other requested amounts[; that benefit charter schools.

The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

~~[(b)] (c)~~ Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide the office with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are



entitled to receive. Federal funds received by the department for charter schools shall be transferred to the office for distribution to charter schools in accordance with the federal requirements. If administrative services related to federal grants and subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six and one-half per cent of the charter school's federal grants and subsidies.

Any charter school shall be eligible to receive any supplemental federal grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six and one-half per cent of the supplemental grant for which the services are used.

All additional funds generated by the local school boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the local school boards.

~~[(e)]~~ (d) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the office shall:

- (1) Provide fifty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to the office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a charter school's per-pupil allocation no later than November 15 of each year; provided that the charter school shall have submitted to the office:
  - (A) Student enrollment as verified on October 15 of each year; provided that the student enrollment shall be verified on the last business day immediately prior to October 15 should that date fall on a weekend; and
  - (B) An accounting of the percentage of student enrollment that transferred from public schools established and maintained by the department; provided that these accountings shall also be submitted by the office to the legislature no later than twenty days prior to the start of each regular session; and
- (3) Retain ~~[the remaining]~~ no more than ten per cent of a charter school's per-pupil allocation no later than ~~[January 1]~~ June 30 of each year as a contingency balance to ensure fiscal accountability~~;~~ and compliance;

provided that the panel may make adjustments in allocations based on noncompliance with ~~[federal and state reporting requirements,]~~ board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, the office's administrative procedures, and board-approved accountability requirements.

~~[(d)]~~ (e) The department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the conversion.

~~[(e)]~~ (f) No start-up charter school or conversion charter school may assess tuition."

SECTION 6. Section 302B-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The panel shall conduct a multi-year [evaluations] evaluation of each charter [schools that have been chartered for four or more years.] school on its fourth anniversary year and every five years thereafter. The panel may from time to time establish a schedule to stagger the multi-year evaluations.”

2. By amending subsection (g) to read:

“(g) If there is an immediate concern for student or employee health or safety at a charter school, the panel, in consultation with the office, may adopt an interim restructuring plan that may include the appointment of an interim local school board, an interim local school board chairperson, or a principal to temporarily assume operations of the school; provided that if possible without further jeopardizing the health or safety of students and employees, the charter school’s stakeholders and community are first given the opportunity to elect a new local school board which shall appoint a new interim principal. The board shall have the authority to direct the panel to take appropriate action to immediately address serious health and safety issues that may exist at a charter school in order to ensure the health and safety of students and employees and mitigate significant liability to the State.”

SECTION 7. (a) The charter school review panel shall establish criteria and an approval process for the development and submission of a capital improvement projects budget for charter school facilities, and recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs, including:

- (1) A calculation showing the per-pupil funding based on the department of budget and finance’s debt service appropriation for the department of education divided by the department of education’s actual enrollment that school year; and
- (2) A determination of the portion of the amount appropriated to be allocated to start-up charter schools on a per-pupil basis.

(b) The charter school review panel shall report its findings and recommendations, including any budget requests and proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2009.

(Approved June 3, 2009.)

## ACT 87

H.B. NO. 640

A Bill for an Act Relating to Environmental Impact Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of transportation has a critical role in ensuring the efficient and timely processing of permits for proposed actions within public rights-of-way. However, during the 2008 legislative session, the legislature found that the problems experienced by applicants in processing permits for the use of public rights-of-way arose from multi-agency

jurisdiction with regard to which agency should take the lead role to exempt certain proposed actions from the environmental assessment requirement. Act 110, Session Laws of Hawaii 2008 (Act 110) provided that whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office of environmental quality control, after consultation with and assistance from the affected agencies, is to determine which agency must prepare the environmental assessment.

Notwithstanding Act 110, the legislature finds that the department of transportation is requiring a determination from the office of environmental quality control for secondary actions that are clearly exempt from the environmental assessment requirement under the department's own rules. As a result, the legislature further finds that the office of environmental quality control is overwhelmed by the number of requests from the department for action reviews, which has created unnecessary delays for actions that would clearly be exempt from the environmental assessment requirement.

The purpose of this Act is to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state's environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way.

SECTION 2. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§343- Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway shall be exempt from this chapter.

(b) As used in this section:

"Discretionary consent" means:

- (1) An action as defined in section 343-2; or
- (2) An approval from a decision-making authority in an agency, which approval is subject to a public hearing.

"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"Primary action" refers to any action outside of the highway or public right-of-way that is on private property.

"Secondary action" refers to any infrastructure within the highway or public right-of-way."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.

(Approved June 3, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Act 171, Session Laws of Hawaii 2008, was adopted to implement the use of an ignition interlock device to prevent drivers previously arrested for driving under the influence of intoxicants from starting or operating a motor vehicle with more than a minimal alcohol concentration while their case is pending or while their license is revoked. Rather than taking a punitive approach that prohibits driving, Act 171 takes a pragmatic approach that requires installation of an ignition interlock device shortly after arrest so that the person can drive, but is prevented from drinking and driving, during the pendency of the case and the revocation period thereafter.

Recognizing the need to resolve a number of outstanding issues in the transition to use of ignition interlock devices, the legislature delayed the effective date of Act 171 to July 1, 2010. The legislature also established a task force to study the issues identified in Act 171 during the interim and make recommendations for additional legislation necessary to implement use of the ignition interlock devices. The task force consists of two members each from the senate and the house of representatives; two members each representing the judiciary; one member representing each of the state departments of transportation, health, and the attorney general; one member representing the office of the public defender; one member representing the police departments in each of the four counties; one member representing the department of the prosecuting attorney in each of the four counties; one member representing the examiner of drivers in each of the four counties; two members representing Mothers Against Drunk Driving; and one member of the Hawaii association of criminal defense lawyers.

The task force addressed each of the issues identified in Act 171 and made recommendations on a number of them, while deferring the remainder until the 2010 session. The task force continued to stress a pragmatic approach, as opposed to a punitive one, with key positions including:

- (1) Installation of the ignition interlock device should be required for all offenders, not just repeat offenders, consistent with the national trend and similar laws that took effect on January 1, 2009, in Alaska, Nebraska, and Washington;
- (2) Unlike current law, which sanctions first offenders more severely if their alcohol level meets or exceeds .15, all first offenders should be treated the same way, regardless of their alcohol level, and no first offender should be required to post proof of financial responsibility;
- (3) Installation of the ignition interlock device should occur as soon after arrest as possible so that the offender learns that driving without the device is not permissible;
- (4) Stricter laws and increased enforcement are needed to deter those who would try to avoid installing the ignition interlock device and drive on a suspended or revoked license;
- (5) The offender should pay for the cost of installing and servicing the ignition interlock device, with the establishment of a fund to pay for those who are determined to be indigent according to specified criteria;
- (6) Use of the ignition interlock device should be overseen principally by the administrative driver's license revocation program, with support from judicial proceedings;

- (7) The alcohol level at which a driver is “locked out” — prevented from starting the vehicle or performing a rolling retest — should be .02 and no penalties should be imposed when a driver is “locked out” or fails to take a retest because the inability to start or keep operating the vehicle will act as the consequence for attempting to drive after drinking;
- (8) Offenders who circumvent or tamper with the ignition interlock device should be charged with another crime;
- (9) Offenders who refuse to be tested for alcohol content should be required to use the ignition interlock device for longer periods than those who take the test, and other strategies that make submitting to the test more appealing than refusal should be developed;
- (10) The department of transportation should select a single provider for installation and maintenance of the ignition interlock device to ensure statewide uniformity in the program; and
- (11) Clear expectations and performance standards should be established for the chosen ignition interlock device vendor.

The purpose of this Act is to enact recommendations made by the ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008.

SECTION 2. Section 291E-5, Hawaii Revised Statutes, is amended to read as follows:

**“[H§291E-5] Ignition interlock special fund; surcharge; indigents.** (a) There is established in the state treasury a special fund to be known as the ignition interlock special fund to be administered by the director of transportation. The fund shall consist of amounts collected under this section and section 291E-6. Moneys in the fund shall be expended by the director of transportation to fund the cost of installing and operating ignition interlock devices in the vehicles of persons who are required to install the device but who are indigent persons, as determined under subsection (d).

(b) Every person who installs an ignition interlock device pursuant to this chapter shall pay the ignition interlock device vendor a surcharge of \$ <sup>1</sup> when the device is installed. The surcharge shall be remitted by the ignition interlock device vendor to the director of transportation within ten days following the end of the month in which the surcharge was collected. The surcharges collected by the vendor pursuant to this subsection shall not be subject to any tax, fee, or other assessment, nor are they considered revenue of the vendor. The director of transportation shall deposit the surcharge amounts into the ignition interlock special fund.

(c) The cost of installing and operating ignition interlock devices required by this chapter [~~or chapter 804~~] for indigent persons shall be paid by the director of transportation from the ignition interlock special fund. Whether a person is an indigent person shall be determined pursuant to subsection (d) by the director or the court, as appropriate.

(d) For purposes of this section, “indigent person” means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 United States Code [~~section~~] Section 9902; or
- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act.

(e) The director of transportation shall adopt rules pursuant to chapter 91 for the purposes of this section.”

SECTION 3. Section 291E-6, Hawaii Revised Statutes, is amended by amending subsections (a) to (d) to read as follows:

"(a) The director of transportation shall establish and administer a statewide program relating to certification and monitoring of ignition interlock devices installed pursuant to chapter 291E ~~[or 804]~~ and ~~[the vendors who]~~ shall select a single vendor to install and maintain them.

(b) The program shall include standards and procedures for the certification of ignition interlock devices installed pursuant to chapter 291E ~~[or 804]~~. At a minimum, the standards shall require that the devices:

- (1) Be certified by a nationally recognized certification organization to meet or exceed all standards and specifications provided as guidelines by the National Highway Traffic Safety Administration. "Nationally recognized certification organization" means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the United States Department of Transportation. The nationally recognized certification organization must be able to administer performance tests of an ignition interlock device or a sample provided by the vendor;
- (2) Operate using an alcohol-specific sensor technology;
- (3) Employ a digital camera by which a photograph of the person using the device can be incorporated into the electronic record generated by each use of the device;
- (4) Require a rolling retest by which the driver must, within a specified period of time or distance driven after starting the vehicle, be re-tested and found to have an alcohol concentration of less than .02, with a margin of error of .01; and
- (5) Generate a record of vehicle usage, including dates, times, and distances driven.

(c) The program shall include standards and procedures for the certification ~~[for vendors who]~~ of the vendor selected to install and maintain ignition interlock devices pursuant to chapter 291E ~~[or 804]~~. At a minimum, the standards shall require that ~~[vendors:]~~ the vendor:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E or 804, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E ~~[or 804]~~, including incidents of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.

(d) ~~[Each vendor who sells or installs an]~~ The vendor selected for installation and maintenance of ignition interlock [device] devices pursuant to chapter 291E ~~[or 804]~~ shall be certified annually by the director of transportation pursuant to this section and the rules adopted thereunder. The vendor shall pay a certification fee to the director of transportation who shall deposit the fee into the ignition interlock special fund established pursuant to section 291E-5."

SECTION 4. Section 291E-15, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-15 Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21. Upon the law enforcement officer’s determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

- (1) Inform the person under arrest of the sanctions under section 291E-41 or 291E-65; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable;

provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or [section 291E-65.] IV.”

SECTION 5. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Except as provided in paragraph [(6)] (5) and in section [291E-44.] 291E-44.5, the respondent shall keep an ignition interlock device installed and operating on any vehicle the respondent operates during the revocation period. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent’s own expense. The periods of administrative revocation with respect to a license and privilege to operate a vehicle that shall be imposed under this part are as follows:

- (1) A ~~[minimum of three months up to a maximum of]~~ one year revocation of license and privilege to operate a vehicle, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- [(2)] ~~For a respondent who is a highly intoxicated driver, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued, a minimum of six months up to a maximum of one year revocation of license and privilege to operate a vehicle;~~
- (3) ~~A minimum of one year up to a maximum of two years]~~ (2) An eighteen month revocation of license and privilege to operate a vehicle, if the respondent’s record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- [(4)] (3) ~~A [minimum of two years up to a maximum of four years]~~ two-year revocation of license and privilege to operate a vehicle, if the respondent’s record shows two prior alcohol enforcement contacts or drug enforcement contacts during the five years preceding the date the notice of administrative revocation was issued;
- [(5)] (4) A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle, if the respondent’s record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the five years preceding the date the notice of administrative revocation was issued; or
- [(6)] (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revocation period provided in paragraphs (1) to [(5)] (4) or in subsection

(c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period;

- (6) For respondents who do not install an ignition interlock device in the respondent's vehicle during the revocation period, revocation of license and privilege to operate a vehicle for the period of revocation provided in paragraphs (1) to (5) or in subsection (c); provided that:

(A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and

(B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

- (c) If a respondent has refused to be tested after being informed:  
 (1) That the person may refuse to submit to testing in compliance with section 291E-11; and  
 (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (2), (3), or (4)~~[-and (5)]~~ shall be for a period of ~~[one year]~~ two years, three years, four years, and ten years, respectively."

SECTION 6. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows:

- (1) ~~[Except as provided in paragraphs (2) and (5), for]~~ For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)~~]; and notwithstanding section 706-623, by probation for not less than one year nor more than two years on the following conditions]:~~

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) (i) ~~Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; or~~

(ii) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;



- (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;
- [2] ~~For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:~~
- (A) ~~A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;~~
  - (B) ~~A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;~~
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- [3] (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than two years eighteen months nor more than four two years on the following conditions:
- (A) ~~[A two-year revocation]~~ Revocation of license and privilege to operate a vehicle during the ~~[revocation]~~ probation period and installation during the ~~[revocation]~~ probation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not ~~[less than five days but not more than fourteen]~~ more than five days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- [4] (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a), and not-

withstanding section 706-623, by probation for ~~[not less than three years nor more than five]~~ two years on the following conditions:

- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) ~~[Three-year revocation]~~ Revocation of license and privilege to operate a vehicle during the ~~[revocation]~~ probation period and installation during the ~~[revocation]~~ probation period of an ignition interlock device on any vehicle operated by the person;
  - (C) ~~[Not less than ten days but not more than thirty days]~~ Up to five days imprisonment of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; ~~[and]~~
- [5] (4) In addition to a sentence imposed under paragraphs (1) through ~~[(4);~~ (3), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed ~~[the maximum term of imprisonment provided in paragraph (1), (3), or (4).]~~ the maximum term of imprisonment provided in paragraph (1), (2), or (3), as applicable. Notwithstanding paragraph ~~[(1);~~ (2), the probation period for a person sentenced under this paragraph shall be not less than two years~~[-]; and~~
- (5) If the person demonstrates to the court that the person:
- (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the probation period; or
  - (B) Is otherwise unable to drive during the probation period,
- the person shall be absolutely prohibited from driving during the period of probation provided in paragraphs (1) to (4); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the probation period.
- (c) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:
- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or
  - (2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b) ~~[-], unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b)."~~

SECTION 7. Section 291E-65, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-65 Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility.** (a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law en-

forcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
  - (2) That the arrested person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;
  - (3) That the person had refused to submit to a breath or blood test;
  - (4) That the arrested person was:
    - (A) Informed of the sanctions of this section; and then
    - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
  - (5) That the arrested person continued to refuse to submit to a breath or blood test.
- (b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:
- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
  - (2) Whether the person was lawfully arrested;
  - (3) Whether the person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;
  - (4) Whether the person refused to submit to a test of the person's breath or blood;
  - (5) Whether the person was:
    - (A) Informed of the sanctions of this section; and then
    - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
  - (6) Whether the person continued to refuse to submit to a breath or blood test.
- (c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license and privilege to operate a vehicle as follows:
- (1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
  - (2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.
- (d) An order of a district court issued under this section may be appealed to the supreme court.

~~[(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part III and shall not be admissible in any other action or proceeding, whether civil or criminal.]~~"

SECTION 8. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; ~~or~~
- (d) ~~[Six]~~ Except as provided in paragraph (e), six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause[-]; or
- (e) Eighteen months to two years upon conviction under section 291E-61(b)(2), and two years upon a conviction under section 291E-61(b)(3).

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3."

SECTION 9. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

**"§804-7.1 Conditions of release on bail, recognizance, or supervised release.** ~~[(a)]~~ Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant's release on bail, recognizance, or supervised release.

~~[(b)]~~ Upon the defendant's release on bail, recognizance, or supervised release, however, the court may enter an order:

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;

- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- (10) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant's bail upon proof that the defendant has breached any of the conditions imposed.

~~[(e) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, except an offense for which the defendant would be sentenced pursuant to section 291E-61(b)(1), the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the defendant will operate during the defendant's release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of the defendant's release on bail, recognizance, or supervised release.~~

~~(d) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:~~

- ~~(1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or~~
- ~~(2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).~~

~~(e) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer while released [on]<sup>1</sup> bail as provided in section 291E-61.~~

~~(f) Except as provided in section 291E-5, installation and maintenance of the ignition interlock device required by subsection (e) shall be at the defendant's own expense.]”~~

SECTION 10. Section 291E-16, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 291E-44, Hawaii Revised Statutes, is repealed.

SECTION 12. Act 171, Session Laws of Hawaii 2008, is amended by amending section 12(g) to read as follows:

“(g) The Hawaii ignition interlock implementation task force shall cease to exist after [June 30, 2010.] June 30, 2011.”

SECTION 13. Act 171, Session Laws of Hawaii 2008, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 2008; provided that sections 2 through 11 shall take effect on [July 1, 2010.] January 1, 2011; provided further that sections 15 and 16 shall be repealed on [June 30, 2010.] December 31, 2010; and provided further that sections 287-20(a) and 291E-61(g), Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2008.”

SECTION 14. The department of transportation shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to effectuate the purposes of sections 291E-5 and 291E-6, Hawaii Revised Statutes, to be enacted on January 1, 2011, pursuant to Act 171, Session Laws of Hawaii 2008 as amended by this Act.

SECTION 15. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 16. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 17. This Act shall take effect on January 1, 2009; provided that:

- (1) Section 4, section 7, section 8, and section 10 shall take effect on January 1, 2011; and
- (2) Section 2, section 3, section 5, section 6, section 9, and section 11 shall take effect upon the enactment of sections 2 through 11 of Act 171, Session Laws of Hawaii 2008, on January 1, 2011.

(Approved June 3, 2009.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 89

H.B. NO. 1141

A Bill for an Act Relating to Thrill Craft Operation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 200-37, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; ~~[and]~~
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore~~[-];~~
- (3) Authorized government personnel conducting operations approved by the department; or
- (4) Authorized film production permit holders conducting operations approved by the department.”

SECTION 2. Section 200-37, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; ~~[and]~~

- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore[-]; or
- (3) Authorized government personnel conducting operations approved by the department.”

SECTION 3. The department of land and natural resources and the Hawaii film office shall submit an initial report on the progress of implementation of section 1 for authorized film production permit holders to the legislature no later than twenty days prior to the convening of the 2010 regular session, and subsequent reports shall be submitted annually including:

- (1) The number of authorized film production permit holders who requested to use thrill craft;
  - (2) The number of authorized film production permit holders permitted to use thrill craft, including the fees, locations, and dates;
  - (3) Any complaints received by the department of land and natural resources or the Hawaii film office for use of thrill craft for film production;
  - (4) Any environmental damage or disruptions caused by use of thrill craft for film production; and
  - (5) Findings and recommendations, including any proposed legislation, regarding film production thrill craft use;
- provided that the final report shall be submitted twenty days prior to the convening of the 2014 regular session.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, 2014; and provided further that section 2 of this Act shall take effect on July 1, 2014.

(Approved June 3, 2009.)

## ACT 90

H.B. NO. 615

A Bill for an Act Relating to Harassment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 711-1106, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
- (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
- (c) Repeatedly makes telephone calls, facsimile~~[-or]~~ transmissions, or any form of electronic communication as defined in section

- 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;
- (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
  - (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
  - (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another."

SECTION 2. Section 711-1106.5, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 2009.)

## ACT 91

H.B. NO. 1057

A Bill for an Act Relating to the State of Hawaii College Savings Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2002, the State of Hawaii established a college savings program called "TuitionEDGE" pursuant to chapter 256, Hawaii Revised Statutes, and Section 529 of the Internal Revenue Code of 1986, as amended. In November 2007, the State contracted with a new program manager and changed its name to "HI529 - Hawaii's College Savings Program." The program was established and exists to assist and encourage families to set aside funds for future higher education expenses.

As of September 30, 2008, there were approximately three thousand seven hundred accounts in the program and \$39,400,000 in program assets. The asset size of Hawaii's program is relatively small and the participation rate is low compared to other states' college savings programs. The State would like to see the program grow and assist more families with saving for college. In these challenging economic times, it is even more important to find ways to help families reach their educational goals. This Act will allow third parties, such as grandparents and other relatives and friends, to contribute directly to a college savings account for a designated beneficiary. This will enable relatives or friends to easily make



contributions into a HI529 account set up for the special child or individual they want to help with achieving their college dreams.

SECTION 2. Section 256-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [Only the account owner may make contributions to the account]~~  
Any person or entity, regardless of whether the person or entity is the account owner, may make contributions to the account after the account is opened.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009, and shall apply to taxable years beginning after December 31, 2008.

(Approved June 5, 2009.)

## ACT 92

H.B. NO. 366

A Bill for an Act Relating to Manta Rays.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that manta rays are a threatened species because of poaching and commercial fishing. In 2005, a bill to prohibit the killing of manta rays was introduced but not heard by the legislature. In 2006, the state house of representatives adopted H.R. No. 30, H.D. 1, which established a working group to determine methods to protect the *batoidea* order including manta rays. Despite these earlier efforts, legislation is needed to more effectively protect manta rays.

The purpose of this Act is to establish fines and penalties for knowingly killing or capturing manta rays within state waters.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§188- Manta rays; prohibitions, penalties and fines.** (a) No person shall knowingly capture or kill a manta ray within state marine waters.

(b) Any person violating this section or any rule adopted pursuant to this section shall be guilty of a misdemeanor and shall be fined:

- (1) \$500 for a first offense;
- (2) \$2,000 for a second offense; and
- (3) \$10,000 for a third or subsequent offense.

(c) In addition to any other penalty imposed under this section, a person violating this section shall be subject to:

- (1) An administrative fine of not more than \$10,000 for each manta ray captured or killed in violation of this section;
- (2) Seizure and forfeiture of any captured manta rays, commercial marine license, vessel, and fishing equipment; and
- (3) Assessment of administrative fees and costs, and attorney's fees and costs.

(d) The criminal penalties and administrative fines and costs shall be assessed per manta ray captured or killed in violation of this section.

(e) This section shall not prohibit special activity permits allowed under section 187A-6; provided that the permit issued does not allow a take that exceeds the potential biological removal level; and provided further that the department shall adopt rules to define a "take" and determine when a take exceeds the potential biological removal level."

SECTION 3. Section 188-70, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person violating any provision of or any rule adopted pursuant to this chapter, [excepting section 188-23, or any rule adopted pursuant thereto,] except sections 188-23 and 188-, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 93**

**S.B. NO. 109**

A Bill for an Act Relating to the Interstate Compact for Juveniles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER  
INTERSTATE COMPACT FOR JUVENILES**

§ -1 **Execution of compact.** The governor is hereby authorized and directed to execute a compact on behalf of the State of Hawaii with any other state or states legally joining them in the form substantially as follows:

**ARTICLE I  
PURPOSE**

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act,

4 United States Code Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

- (1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
- (2) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
- (3) Return juveniles who have run away, absconded, or escaped from supervision or control, or have been accused of an offense to the state requesting their return;
- (4) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
- (5) Provide for the effective tracking and supervision of juveniles;
- (6) Equitably allocate the costs, benefits, and obligations of the compacting states;
- (7) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
- (8) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
- (9) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;
- (10) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
- (11) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
- (12) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
- (13) Coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

## ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

"Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

"Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

"Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and the policies adopted by the state council under this compact.

"Compacting state" means any state that has enacted the enabling legislation for this compact.

"Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

"Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and the policies adopted by the state council under this compact.

"Interstate commission" means the interstate commission for juveniles created by article III of this compact.

"Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

- (1) An accused delinquent, who is a person charged with an offense that, if committed by an adult, would be a criminal offense;
- (2) An adjudicated delinquent, who is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
- (3) An accused status offender, who is a person charged with an offense that would not be a criminal offense if committed by an adult;
- (4) An adjudicated status offender, who is a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
- (5) A nonoffender, who is a person in need of supervision who has not been accused or adjudicated as a status offender or delinquent.

"Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

"Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

"Rule" means a written statement by the interstate commission adopted pursuant to article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

"State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

### ARTICLE III INTERSTATE COMMISSION FOR JUVENILES

(a) The compacting states hereby create the interstate commission for juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth herein, and any additional powers that may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the commission in that capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Noncommissioner members shall include members of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the commission shall be ex-officio nonvoting members. The interstate commission may provide in its bylaws for such additional ex-officio nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

(d) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(e) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall:

- (1) Oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff;
- (2) Administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and
- (3) Perform such other duties as directed by the interstate commission or set forth in the bylaws.

(g) Each member of the interstate commission may cast a vote to which that compacting state is entitled and participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state; provided that a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members'

participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures;
- (2) Disclose matters specifically exempted from disclosure by statute;
- (3) Disclose trade secrets or commercial or financial information that is privileged or confidential;
- (4) Involve accusing any person of a crime, or formally censuring any person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (6) Disclose investigative records compiled for law enforcement purposes;
- (7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;
- (8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
- (9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting, insofar as is reasonably possible, shall conform to up-to-date technology and the interstate commission shall coordinate their information functions with the appropriate repository of records.

## ARTICLE IV

### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers and duties:

- (1) To provide for dispute resolution among compacting states;

- (2) To adopt rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules adopted by the interstate commission;
- (4) To enforce compliance with the compact provisions, the rules adopted by the interstate commission, and the bylaws, using all necessary and proper means, including the use of judicial process;
- (5) To establish and maintain offices that shall be located within one or more of the compacting states;
- (6) To purchase and maintain insurance and bonds;
- (7) To borrow, accept, hire, or contract for personnel services;
- (8) To establish and appoint committees and hire staff that the commission deems necessary for the carrying out of its functions, including an executive committee as required by article III, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- (9) To elect or appoint officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) To accept, receive, use, and dispose of any and all donations and grants of money, equipment, supplies, materials, and services;
- (11) To lease, purchase, or accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) To establish a budget and make expenditures and levy dues as provided in article VIII of this compact;
- (14) To sue and be sued;
- (15) To adopt a seal and bylaws governing the management and operation of the interstate commission;
- (16) To perform any functions that may be necessary or appropriate to achieve the purposes of this compact;
- (17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission;
- (18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;
- (19) To establish uniform standards for reporting, collecting, and exchanging of data; and
- (20) To maintain the interstate commission's corporate books and records in accordance with the bylaws.

## ARTICLE V ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

**Section A. Bylaws.** The interstate commission, by a majority of the members present and voting, and within twelve months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establishing an executive committee and any other committees that may be necessary;
- (3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each meeting;
- (5) Establishing the titles and responsibilities of the officers of the interstate commission;
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;
- (7) Providing "start-up" rules for initial administration of the compact; and
- (8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

**Section B. Officers and staff.** (a) The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the commission.

(b) The interstate commission, through its executive committee, shall appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, and shall hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

**Section C. Qualified immunity, defense, and indemnification.** (a) The interstate commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused, arising out of, or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection shall be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of the person.

(b) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts,



errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of the person.

(c) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of the person.

(d) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that those persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

## **ARTICLE VI**

### **RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

(a) The interstate commission shall adopt and publish rules to effectively and efficiently achieve the purposes of the compact.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Rulemaking shall substantially conform to the principles of the Model State Administrative Procedure Act, 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate, consistent with due process requirements under the Constitution of the United States. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(c) When adopting a rule, the interstate commission shall:

- (1) Publish the proposed rule's entire text stating the reason for the proposed rule;
- (2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and made publicly available;
- (3) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and
- (4) Adopt a final rule and its effective date, if appropriate, based on comment from state or local officials, or interested parties.

(d) Not later than sixty days after a rule is adopted, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the

rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedure Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states, by enactment of a statute or resolution in the same manner used to adopt the compact, may cause the rule to have no further force and effect in any compacting state.

(f) Upon determination by the interstate commission that a state of emergency exists, the commission may adopt an emergency rule that becomes effective immediately upon adoption; provided that the usual rulemaking procedures provided in this article shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

## ARTICLE VII OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

**Section A. Oversight.** (a) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor activities being administered in noncompacting states that may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. This compact and the rules adopted under this compact shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the commission is entitled to receive all service of process in the proceeding, and has standing to intervene in the proceeding for all purposes.

**Section B. Dispute resolution.** (a) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the compact and its bylaws and rules.

(b) The interstate commission, upon the request of a compacting state, shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall adopt rules providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in article XI of this compact.

## ARTICLE VIII FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and its staff that shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The

aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and shall adopt rules binding upon all compacting states that govern the assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws; provided that all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a licensed certified and licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## ARTICLE IX THE STATE COUNCIL

(a) The Hawaii state council for interstate juvenile supervision is established, and shall be placed administratively in the judiciary. The council shall be composed of nine members to be appointed as follows:

- (1) One member of the house of representatives, appointed by the speaker of the house of representatives;
- (2) One member of the senate, appointed by the senate president;
- (3) One member of the judiciary appointed by the chief justice of the supreme court;
- (4) The executive director of the office of youth services, or the director's designee;
- (5) One member from the general public representing victims' groups, appointed by the governor, with the advice and consent of the senate;
- (6) A prosecuting attorney or the prosecuting attorney's designee; provided that this appointment shall rotate every four years among the several counties, as follows: Honolulu, Hawaii, Maui, and Kauai;
- (7) The attorney general, or the attorney general's designee;
- (8) The state public defender, or the state public defender's designee; and
- (9) The compact administrator, appointed by the governor, with the advice and consent of the senate and the chief justice.

With the exception of the members designated in paragraphs (4), (6), (7), (8), and (9), the terms of all members shall be for four years; provided that the victims' group representative and the compact administrator shall be subject to confirmation proceedings under section 26-34. No person, except the compact administrator, shall be appointed consecutively to more than two terms.

(b) The state council shall exercise oversight and advocacy concerning its participation in commission activities and other duties that may be determined by the council, including development of policy concerning operations and procedures of the compact within the state. The council shall also have the authority to appoint a member other than the compact administrator to cast a vote on behalf of the State at meetings of the interstate commission in which the compact administrator is absent.

(c) Expenditures by the council, including the amount fixed annually as the equal contribution of each member to the compact, shall be made upon

warrants issued by the state comptroller based upon vouchers approved by any one of the commissioners. A proposed program for the State's continuing participation in the activities of the interstate commission for juvenile supervision, including a budget request, shall be submitted by the commissioners to each regular session of the legislature.

## ARTICLE X

### COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

## ARTICLE XI

### WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

**Section A. Withdrawal.** (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw ("withdrawing state") from the compact by specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extends beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

### **Section B. Technical assistance, fines, suspension, termination, and default.**

(a) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly adopted rules, the interstate commission may impose any or all of the following penalties:

- (1) Remedial training and technical assistance as directed by the interstate commission;
- (2) Alternative dispute resolution;
- (3) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

- (4) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include but are not limited to failure of a compacting state to perform obligations or responsibilities imposed upon it by this compact, the bylaws, or duly adopted rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination.

(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(d) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

**Section C. Judicial enforcement.** The interstate commission, by majority vote of the members, may initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court where the interstate commission has its offices, to enforce compliance with the provisions of the compact, and its duly adopted rules and bylaws, against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney's fees.

**Section D. Dissolution of compact.** (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes void and shall be of no further effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

## ARTICLE XII SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

## ARTICLE XIII BINDING EFFECT OF COMPACT AND OTHER LAWS

**Section A. Other laws.** (a) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(b) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

**Section B. Binding effect of the compact.** (a) All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the compacting states.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.

(d) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the interstate commission shall be ineffective and the obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which the obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective."

SECTION 2. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

**"§571-11 Jurisdiction; children.** Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred[-];
- (2) Concerning any child living or found within the circuit:
  - (A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;
  - (B) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare;
  - (C) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or

- (D) Who is in violation of curfew[-];
- (3) To determine the custody of any child or appoint a guardian of any child[-];
- (4) For the adoption of a person under chapter 578[-];
- (5) For the termination of parental rights under sections 571-61 to 571-63[-];
- (6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law[-];
- (7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill child[-];
- (8) Under the Interstate Compact on Juveniles under chapter 582[-] or the Interstate Compact for Juveniles under chapter :
- (9) For the protection of any child under chapter 587[-]; and
- (10) For a change of name as provided in section 574-5(a)(2)(C).”

SECTION 3. Section 571-32, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) No child may be held after the filing of a petition or motion, as specified in subsection (d) [~~of this section~~], unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the child comes within section 571-11(1), the child may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. If there is probable cause to believe that the child comes within section [~~571-11(2), or section 281-101.5,~~] 281-101.5 or 571-11(2), the child may be held, following a court hearing, in a shelter but may not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the child is subject to the provisions of chapter 582, Interstate Compact on Juveniles, or chapter , Interstate Compact for Juveniles, or is allegedly in or has already been adjudicated for a violation of a valid court order, as provided under the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$12,480 or so much thereof as may be necessary for fiscal year 2010-2011 for the State’s share of the administrative expenses of the Interstate Compact for Juvenile.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 5, 2009.)

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 161, Session Laws of Hawaii 2007, authorized the University of Hawaii board of regents to issue \$100,000,000 in revenue bonds to help address the university's capital facility needs. Since that time, the University of Hawaii has been identifying and prioritizing its capital facility needs throughout the university system. Depending on real estate opportunities that may arise, market and economic conditions, and changes in the university's priorities, construction of new projects and the renovation and major repair of existing facilities may include faculty and student housing; additional classroom, laboratory, and office space; research facilities, utility facilities, and other infrastructure requirements; libraries; student support facilities; and athletic facilities.

To accomplish this, the university desires an extension of the expiration date for the \$100,000,000 appropriated under Act 161. The university is also seeking an additional \$100,000,000 to complete as many of its priority capital facility construction, renovation, and repair projects as possible.

SECTION 2. Act 161, Session Laws of Hawaii 2007, is amended by amending sections 6 and 7 to read as follows:

"SECTION 6. The board of regents of the University of Hawaii, with the approval of the governor, is authorized to issue revenue bonds from time to time to finance, in whole or in part, the costs of construction or the costs of maintenance of any university project, including reserves therefor as the board of regents may direct. The total principal amount of the revenue bonds authorized by this Act shall not exceed ~~[\$100,000,000;]~~ \$200,000,000; provided that neither revenue bonds issued to refund revenue bonds heretofore issued, to the extent that such refunding revenue bonds do not exceed the principal amount of the revenue bonds being refunded, nor revenue bonds of the board outstanding at the effective date of this Act shall cause the amount of the above authorization to be decreased. The revenue bonds shall be issued pursuant to the provisions of part VI of chapter 304A, Hawaii Revised Statutes. The principal and interest on the revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid solely from and secured solely by the revenue of the university as defined in section ~~[304A-A;]~~ 304A-2671, Hawaii Revised Statutes.

SECTION 7. There is appropriated out of the revenue bond proceeds authorized by this Act the sum of \$100,000,000 or so much thereof as may be necessary ~~[for fiscal year 2007-2008 and the same sum or so much thereof as may be necessary]~~ for fiscal year 2008-2009 to carry out the purposes of section 6~~[-]~~ of this Act; provided that any unexpended and unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2008-2009 and shall lapse instead on June 30, 2013.

There is also appropriated out of the revenue bond proceeds authorized by this Act, the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 to carry out the purposes of section 6 of this Act; provided that any unexpended and unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2009-2010 and shall lapse instead on June 30, 2015.



The sums appropriated shall be expended by the board of regents of the University of Hawaii.”

SECTION 3. The University of Hawaii shall notify the legislature upon issue of the additional revenue bonds authorized by section 2 of this Act, including a detailed listing and description of all projects to be funded through the revenue bonds authorized pursuant to this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2009.

(Approved June 8, 2009.)

## ACT 95

S.B. NO. 931

A Bill for an Act Relating to Epidemiologic Investigations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-29, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§321-29] Epidemiologic investigations.** (a) The department may conduct investigations to determine the nature and extent of diseases and injuries deemed by the department to threaten the public health and safety.

(b) Every person, health care provider, and medical facility shall provide the patient’s name, the name of a minor patient’s parent or guardian, address, telephone number, age, sex, race or ethnicity, clinical signs and symptoms, laboratory test results, diagnostic interview data, treatment provided, and the disposition of the patient when requested by an authorized representative of the director for the purpose of conducting such an investigation. The authorized representative may ~~[only]~~ view only the limited portion of the patient’s medical record~~[, which] that~~ is directly relevant in time and scope to the subject of the investigation.

(c) Every person, company, organization, association, health care provider, medical facility, or any other possible source of information shall provide names, addresses, telephone numbers, and locating information regarding an individual or group of individuals suspected of having been exposed to a disease or disease-causing substance that is the subject of an epidemiologic investigation when requested by an authorized representative of the director.

For the purposes of this subsection, “locating information” includes information contained in appointment, reservation, registration, invitation, attendance, billing, payment lists, or any other record that may help the department identify, locate, or contact individuals or groups suspected of having been exposed to a disease under investigation.

(d) When, in the written opinion of the director of health reasonable cause exists for the investigation of a disease or series of injuries that threatens public health or safety and that the collection of plant, animal, food, or environmental samples or specimens for immediate testing is necessary, an authorized representative of the department, during regular working hours or at other reasonable times may demand entry onto any premises, public or private, for the purpose of conducting an administrative investigation; provided that:

- (1) (A) Entry shall only occur with the consent of the owner, owner's agent, or person in lawful control of the property to investigate and collect relevant samples; or
- (B) If consent is not obtained, entry shall only occur after issuance of an administrative investigation warrant pursuant to subsection (e), specifying the area to be searched and the types of samples and specimens sought;
- (2) The investigation shall be limited to only those samples, specimens, and investigative actions that are necessary to confirm or deny the cause that prompted the investigation;
- (3) An authorized representative of the director shall be liable only for damage caused by acts beyond the scope of the representative's authority, or by the representative's gross negligence or intentional misconduct; and
- (4) The director's authorized representative shall leave an inventory describing any samples or specimens obtained, and the department shall make split samples available to the person whose premises are subject to the investigation.

For the purposes of this subsection, "administrative investigation" means any investigation, independent of a criminal investigation, that is conducted for the purpose of determining the existence of disease or series of injuries deemed by the department to threaten the public health or safety. An administrative investigation may involve the examination of real or personal property, records, equipment, buildings, products, by-products, wastes, processes, activities, environmental conditions (i.e., air, soil, and water quality), or other property or activities.

(e) If consent to entry is denied under subsection (d), the department representative may apply to the district court in the circuit in which the property is located for an administrative investigation warrant to enter the premises to effectuate the purposes of this section. The district court may issue an administrative investigation warrant directing a police officer of the county in the circuit to assist the department representative in gaining entry onto the premises during regular working hours or at other reasonable times. The warrant may command the police officer to take sufficient aid, and being accompanied by a representative of the department, to go to the premises described in the warrant and search for, seize, secure, or collect, under the specific direction of the representative, or allow the representative to search for, seize, secure, or collect, plant, animal, food, or environmental samples or specimens deemed necessary to conduct the investigation successfully. A district court may issue an administrative investigation warrant if sufficient facts are presented to the court that would establish probable cause for the need for the search. Probable cause for the need for the search shall be established by affidavit demonstrating:

- (1) The opinion of the director of health that there is reasonable cause for the investigation of the particular premises at issue;
- (2) That the investigation is necessary for the protection of public health and safety under this section; and
- (3) That consent to search the particular premises has been denied under subsection (d)(1)(A).

A copy of the administrative investigation warrant and all supporting affidavits shall be provided to the person served. If a suitable person is not available to be served after reasonable efforts to locate such a person, the administrative investigation warrant may be left at the principal entry of the investigated premises.

[(d)] (f) No person, company, organization, association, health care provider, medical facility, or other source that provides information requested by

an authorized representative of the director, for the purpose of conducting an investigation under this section, shall be held civilly or criminally liable for providing that information to the department.

~~[(e)] (g)~~ All information provided to the department under this section shall be kept strictly confidential, except as the director determines is necessary to protect the public health and safety. Access to confidential records shall be restricted to those individuals specifically authorized to participate in any given investigation. However, epidemiologic and statistical information with no individual identifying information may be released to the public. The identities of individuals whose medical records are investigated shall be disclosed only to those persons authorized by the director or the director's representative to conduct a specific investigation under this section or determined by the director to be necessary to protect the health and safety of the public.

(h) The director shall adopt rules under chapter 91 as are appropriate to carry out the purposes of this section and its efficient administration. The rules shall:

- (1) Establish administrative remedies for the owner, owner's agent, or person in lawful control of the property to file a claim with the department for damaged and seized property; provided that there shall be no administrative remedy for the seizure of de minimis samples;
- (2) Provide notice to the owner, owner's agent, or person in lawful control of the property of the administrative remedies available for damaged and seized property; and
- (3) Provide penalties for the failure to comply with any rule."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 8, 2009.)

## ACT 96

S.B. NO. 585

A Bill for an Act Relating to Remote Dispensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many individuals living in underserved or remote areas need improved access to medications and pharmacy services. Without access to a pharmacy, individuals face tremendous barriers to obtaining basic, much-needed medications.

The purpose of this Act is to permit residents on rural islands and in remote areas to have access to a remote dispensing pharmacy for the purpose of obtaining medications regardless of the type of medical insurance that they have.

SECTION 2. Section 461-10.5, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a), (b), (c), and (d) to read:

**"[§461-10.5] Remote dispensing pharmacy; operations.** (a) A remote dispensing pharmacy shall be under the direct supervision of the registered pharmacist in charge of the responsible pharmacy who shall:

- (1) Ensure that the remote dispensing pharmacy is in compliance with all laws and rules governing the practice of pharmacy and remote dispensing;
- (2) Ensure that the remote dispensing pharmacy is appropriately staffed by a qualified remote dispensing technician; and
- (3) Be responsible for the integrity of the drugs in the remote dispensing machine and ensure that drugs for the remote dispensing machine are provided to the remote dispensing pharmacy only from the responsible pharmacy.
- (b) ~~[Physical set-up.]~~ A remote dispensing pharmacy shall:
  - (1) Be effectively secured to prevent unauthorized access at all times~~;~~ ~~and entry to the remote dispensing pharmacy shall be limited]~~ and limit entry to authorized personnel only;
  - (2) Be connected via live computer link, video link, and audio link to the responsible pharmacy ~~[and shall use]~~ through the information technology system of the responsible pharmacy;
  - (3) Conspicuously display at the remote dispensing machine:
    - (A) A copy of the license of the responsible pharmacy; and
    - (B) A copy of the license of the pharmacist in charge of the responsible pharmacy; and
  - (4) Have a confidential area available for communication between the patient and the pharmacist at the responsible pharmacy.
- (c) No remote dispensing pharmacy shall operate within a five mile radius of any pharmacy as defined under section 461-1; provided that:
  - (1) This subsection shall not apply to any remote dispensing pharmacy established prior to July 3, 2008 that has previously dispensed and will continue to dispense only prescription medications acquired pursuant to section 340B of the Public Health Service Act, Title 42 United States Code section 256b; ~~and]~~
  - (2) If an appropriately designated pharmacy, as defined in section 461-1, is established within a five mile radius of an existing remote dispensing pharmacy exempted by this subsection, all appropriate measures shall be taken to encourage the relocation of the existing remote dispensing machine within the newly established pharmacy~~]; and~~
  - (3) This subsection shall not apply to any remote dispensing pharmacy established in a facility operated by a health maintenance organization regulated pursuant to chapter 432D for the exclusive use of patients served at the facility.
- (d) Remote dispensing pharmacies shall not provide medications to patients with health insurance coverage, except for ~~[patients]~~:
  - (1) Patients covered by QUEST];
  - (2) Patients served at a facility operated by a health maintenance organization regulated pursuant to chapter 432D; or
  - (3) Patients residing on an island without a pharmacy or in remote areas without an existing pharmacy within a five mile radius. A remote dispensing pharmacy established pursuant to this subsection may continue to operate in the same location if a pharmacy is subsequently established on the same island as the remote dispensing pharmacy or in the remote area without an existing pharmacy within a five mile radius; provided that the remote dispensing pharmacy shall no longer be authorized to dispense controlled substances."
2. By amending subsections (g), (h), (i), and (j) to read:

“(g) Each remote dispensing machine shall be operated by only one responsible pharmacy. A responsible pharmacy may operate ~~[through]~~ more than one remote dispensing machine.

(h) The remote dispensing machine shall have the following features to ensure that it is appropriately secure at all times and that all transactions are properly documented:

- (1) Secure double-locked cabinets;
- (2) Bar-coding or similar technology that effectively recognizes the product;
- (3) A cabinet that delivers only one bar-coded unit-of-use container per ~~[dispense,]~~ dispensation, per prescription;
- (4) A scanner and printer that, upon releasing the unit-of-use container from the remote dispensing machine, ~~[the container is scanned]~~ scans the container to confirm it is the correct container, and ~~[with that confirmation, the printer will print]~~ if confirmed, prints a patient-specific label that has a bar code which is scanned to confirm it is the correct label for the prescription; and
- (5) A video component that allows the patient to have a “face-to-face” consultation with the pharmacist at the responsible pharmacy.

(i) A pharmacist shall be in charge of the remote dispensing machine and shall ensure that:

- (1) Written policies and procedures are developed ~~[prior to using the machine]~~ before the machine is used that:
  - (A) Ensure the safe and effective dispensing of pharmaceutical products;
  - (B) Ensure that the remote dispensing pharmacy and the remote dispensing machine ~~[is]~~ are operating safely, accurately, and securely; and
  - (C) Define the conditions for access to the remote dispensing machine and to medications contained within or associated with the machine, including policies that assign, discontinue, or change access to the remote dispensing machine and medications;
- (2) A pharmacist licensed in this State and employed by the responsible pharmacy has secured access to the drugs in the remote dispensing machine;
- (3) Access to the ~~[medications]~~ drugs in the remote dispensing machine complies with state and federal laws, rules, and regulations;
- (4) No prescription drug is dispensed at the remote dispensing pharmacy until a pharmacist at the responsible pharmacy has verified the finished prescription;
- (5) Only one prescription is dispensed and labeled from the remote dispensing machine at a time;
- (6) All prescriptions dispensed have a label affixed to the final drug container that meets the requirements set forth in section 328-16 and includes the address of the remote dispensing pharmacy;
- (7) If a patient refuses the prescription drug at the time it is dispensed, the prescription drug is locked in a secured cabinet;
- (8) There is proper inventory control at the remote dispensing pharmacy and only a registered pharmacist or a remote dispensing technician assigned by the pharmacist in charge of the responsible pharmacy shall stock the remote dispensing machine;
- (9) A reconciliation of the physical inventory of the remote dispensing pharmacy is conducted at least annually;

- (10) All personnel who operate the remote dispensing machine at the remote dispensing pharmacy are properly trained. Training shall ensure the competence and ability of all personnel who operate any component of the remote dispensing machine and the remote dispensing pharmacy. Documentation of training shall be kept by the responsible pharmacy; and
- (11) The remote dispensing machine is stocked accurately and in accordance with established written policies and procedures. The pharmacist shall check the accuracy of the product supplied for stocking the remote dispensing machine.
- (j) Controlled substances shall not be dispensed from any remote dispensing machine or remote dispensing pharmacy~~[-]~~, except:
  - (1) On islands without a pharmacy, or in remote areas without an existing pharmacy within a five mile radius; and
  - (2) In a facility operated by a health maintenance organization regulated pursuant to chapter 432D for the exclusive use of patients served at the facility."
3. By amending subsection (o) to read:
  - (o) This section shall not apply to:
    - (1) Mobile medical clinics, provided that no such clinic shall operate in counties with a population less than ~~[100,000;]~~ one hundred thousand persons; or
    - (2) Federally qualified health centers, provided that no remote dispensing pharmacy shall operate within a five mile radius of any pharmacy as defined under section 461-1, except for those federally qualified health centers that are exempt under ~~[section 461-10.5(e) (2)-]~~ subsection (c)(1).

As used in this subsection, "mobile medical clinic" means a motor vehicle retrofitted for exclusive use as a medical office or clinic for medical services licensed under chapter 321."

SECTION 3. Act 212, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on ~~[January 2<sup>1</sup>, 2013.]~~ January 2, 2014."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 2009.)

#### Note

1. Prior to amendment "1" appeared here.

## ACT 97

H.B. NO. 1103

A Bill for an Act Relating to Federal Financial Assistance for Independent Living Services and Centers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The statewide council on independent living was created by Act 197, Session Laws of Hawaii 1993 (codified as section 348-9, Hawaii Revised Statutes (HRS)), and placed within the department of human services.

Act 84, Session Laws of Hawaii 1995, removed the statewide council on independent living from the department of human services to conform with the 1992 and 1993 amendments to the federal Rehabilitation Act of 1973, Title 29 United States Code Section 796d, which requires states to establish a statewide independent living council to receive federal financial assistance and prohibited a statewide independent living council from being placed within a state agency in order to receive the federal financial assistance. Act 84 retained the statewide council on independent living but made the statewide council on independent living a temporary agency with a repeal date of June 30, 1998, at which time section 348-9(a), HRS, was to be reenacted. On June 30, 1998, Act 84 was repealed and the statewide council on independent living was again administratively placed in the department of human services. No other laws were passed after 1998 to remove the statewide council on independent living from placement in the department of human services.

Federal law, Title 29 United States Code Section 796d, still requires the State to establish a statewide independent living council, which still cannot be established as an entity within a state agency for the State to be eligible to receive federal financial assistance.

Section 348-9, HRS, was well intended, but it does not conform to the federal requirements for a statewide independent living council, and has resulted in confusion.

The purpose of this Act is to repeal section 348-9, HRS, which will abolish the statewide council on independent living as an entity within the department of human services.

SECTION 2. Section 348-9, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Water Quality.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
DRINKING WATER AND WASTEWATER INFRASTRUCTURE

SECTION 1. The purpose of this part is to enable Hawaii to receive and use moneys under the federal American Recovery and Reinvestment Act of 2009 and any later federal laws for drinking water or wastewater infrastructure.

SECTION 2. Chapter 340E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§340E- Use of American Recovery and Reinvestment Act of 2009 and other federal moneys.** (a) The director may provide financial assistance to public water systems for the construction of necessary drinking water infrastructure projects, through the drinking water fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The director may establish a separate account within the drinking water fund and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The director may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the drinking water fund, including forgiveness of principal, zero and negative interest loans, and grants to public water systems that meet eligibility requirements for the drinking water fund.

(c) The director shall certify that a project is entitled to priority over other eligible projects on the basis of drinking water quality and financial needs, as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(d) Among eligible projects, the director may also give priority to projects that incorporate renewable energy, energy efficiency, and conservation measures in drinking water infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall conform with the conditions for drinking water project financial assistance under section 340E-37(a).”

SECTION 3. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342D- Use of American Recovery and Reinvestment Act of 2009 and other federal moneys.** (a) The director may provide financial assistance for publicly owned wastewater treatment works for the construction of necessary wastewater infrastructure projects, through the revolving fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The director may establish a separate account within the revolving fund and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The director may use those moneys and in so doing may



include additional requirements and subsidization not applicable to the remainder of the revolving fund, including forgiveness of principal, zero and negative interest loans, and grants to publicly-owned wastewater treatment works that meet eligibility requirements for the revolving fund.

(c) The director shall certify that a project receiving financial assistance is entitled to priority over other eligible projects on the basis of water pollution and financial needs, as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(d) Among eligible projects, the director may also give priority to projects that incorporate renewable energy, energy efficiency, and conservation measures in wastewater infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall be in conformance with the conditions for water pollution control financing under section 342D-87(a)(1), (2), (4), and (5), and (b)."

SECTION 4. Section 340E-31, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"American Recovery and Reinvestment Act of 2009" means the federal law, Public Law 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes."

SECTION 5. Section 342D-80, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"American Recovery and Reinvestment Act of 2009" means the federal law, Public Law 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes."

## PART II TOTAL MAXIMUM LOAD COORDINATOR

SECTION 6. The department of health may establish not more than two exempt positions, each entitled "total maximum daily load coordinator." The total maximum daily load coordinator positions shall, among other duties, assist the department to meet federal requirements for establishing total maximum daily loads in Hawaii. This includes quantifying waste load allocations and load allocation limits on pollutant loading of Hawaii inland and marine waters and developing technically based plans for achieving the State's stated water quality goals. The positions shall be appointed by the director of health without regard to chapter 76. These positions shall be funded by federal grants to the State under the Federal Water Pollution Control Act of 1972, Public Law 92-500 (33 U.S.C. 1251-1387), as amended.

## PART III GENERAL PROVISIONS

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Correctional Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 328J-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§328J-7]]~~ **Exceptions.** Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 328J-3, 328J-4, and 328J-5:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility;
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty per cent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited under this chapter. The status of rooms as smoking or nonsmoking may not be changed, except to add additional non-smoking rooms;
- (3) Retail tobacco stores; provided that smoke from these places shall not infiltrate into areas where smoking is prohibited under this chapter;
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places shall not infiltrate into areas where smoking is prohibited under this chapter;
- (5) Outdoor areas of places of employment except those covered by the provisions of sections 328J-3 and 328J-5;
- (6) All areas covered by this chapter when smoking is part of a production being filmed; and
- (7) State correctional facilities~~[-]~~; provided that smoking shall only be authorized for employees and volunteers of a correctional facility in an area outside the secure confines of a correctional facility restricted from access by inmates or detainees that has been designated by the warden of a correctional facility.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 8, 2009.)

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that almost every school in Hawaii is plagued by traffic congestion that results from poor planning and increased

vehicular traffic. It is estimated that as much as twenty to twenty-five per cent of morning traffic consists of parents driving their children to school. Ironically, safety concerns lead parents to drive their children to school, which increases traffic and makes it even less safe for others to walk and bike. Unfortunately, fifty per cent of children who are hit by cars near schools are hit by cars driven by parents of other students.

As part of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law No. 109-59, Hawaii has been awarded \$1,000,000 per year for five years for the Safe Routes to School program. Program funds may be used for both infrastructure-related and behavioral projects designed to reduce traffic, fuel consumption, and air pollution in the vicinity of schools and provide a safe and appealing environment for primary and secondary school children to walk and bicycle to school.

Efficient and effective use of Safe Routes to School funding requires planning that includes the full range of community stakeholders so that projects have the support of parents, students, and schools needed to succeed. Planning also needs to deemphasize very expensive engineering changes, like additional traffic lights that can consume one-third of the annual grant budget. Smaller projects involving more stakeholders and more schools are necessary to generate change across a broad spectrum of the state. The process must begin with assembling basic information about transportation issues confronting students, parents, and the community.

The purpose of this Act is to:

- (1) Enhance traffic safety, especially around Hawaii's schools;
- (2) Enable and encourage children to walk and bicycle to school; and
- (3) Make bicycling and walking to school a safer and more appealing transportation alternative through the federal Safe Routes to School program.

**SECTION 2.** (a) The director of transportation, through the Safe Routes to School coordinator, and in consultation with the department of education, department of health, and Hawaii Association of Independent Schools, shall provide federal Safe Routes to School program funds for school-based and community-based workshops and infrastructure and non-infrastructure projects that will reduce vehicular traffic and congestion, encourage walking and bicycling, and promote health and safety around Hawaii's schools. Implementation of the Safe Routes to School program shall take into consideration the need to:

- (1) Create and fill a permanent, full-time position of Safe Routes to School coordinator within the department of transportation to provide a central point of contact for the program;
- (2) Maximize the participation of stakeholder groups in the community and school officials;
- (3) Train volunteer facilitators for school-based workshops and community-based projects, including flexible training schedules;
- (4) Train potential grant requestors and stakeholder groups in federal and state requirements necessary in procurement, contracts, design, and construction; and
- (5) Allocate not less than ten per cent and not more than thirty per cent of the apportionment of federal Safe Routes to School program funds for non-infrastructure-related activities or activities to encourage walking and bicycling to school, public awareness campaigns, student sessions on bicycle and pedestrian safety, or other non-infrastructure activities as prescribed under Section 1404 of

P.L. 109-59 of the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act.

- (b) Each grant proposal in the Safe Routes to School program shall:
  - (1) Identify the modes of travel used by students to get to school;
  - (2) Determine the number of students using each mode of travel;
  - (3) Survey the parents of each student to gather information regarding the factors involved in the choice of transportation mode for the student and, where the student travels by automobile or bus, what would need to change for the parent to permit the student to walk or ride a bicycle to school, and obstacles to walking and biking; and
  - (4) Identify traffic infrastructure elements in the immediate vicinity of each school, including multi-lane roadways, speed limits, and traffic calming features that, either by their presence or absence, contribute to the use of automobiles as a student's mode of travel to school.

SECTION 3. The director of transportation, in consultation with organizations that have received non-infrastructure and pending infrastructure grants, shall develop a streamlined process for the federal Safe Routes to School grant program that meets federal and state requirements, simplifies the application process, and expedites release of funding after completion of school-based and community-based projects for infrastructure and non-infrastructure.

SECTION 4. The director of transportation shall submit to the legislature a report of the status and progress of the Safe Routes to School program, no later than twenty days prior to the convening of the regular session of 2010.

SECTION 5. Nothing in this Act shall be construed as requiring actions or omissions that would render the State ineligible to receive funds for the Safe Routes to School program under the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law No. 109-59.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 9, 2009.)

## ACT 101

S.B. NO. 914

A Bill for an Act Relating to Public Assistance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

““Non-work eligible household” means a household in which each adult member is receiving assistance under the temporary assistance for needy families program, or is a non-recipient parent, who is:

- (1) A parent of a household member who provides care for a disabled family member living in the home; provided that the need for such care is supported by medical documentation. Only one parent in a household may claim this status;

- (2) A single custodial parent personally providing care for the parent's child under twelve months of age for a lifetime limit of twelve months;
- (3) A non-needy caretaker; or
- (4) A recipient of Supplemental Security Income or Social Security Disability Insurance under Title 42 United States Code Sections 1381-1383.

"Other work eligible household" means a household in which there is no work eligible individual and at least one adult member is an adult receiving assistance under the temporary assistance for needy families program, or a non-recipient parent, who is:

- (1) Unable to engage in full-time employment as defined by the work participation requirements of the Social Security Act, Title 42 United States Code Section 607, at a job for which the non-recipient parent is equipped by education, training, or experience, for a period of more than thirty days from the onset of an illness, incapacity, or disability due to a physical or mental impairment or substance abuse, as determined by a licensed physician or psychologist;
- (2) A domestic violence victim or any other adult in the assistance unit who meets the criteria established by the department; or
- (3) An adult sixty-five years of age or older.

"Work eligible household" means a household in which at least one member is:

- (1) An adult receiving assistance under the temporary assistance for needy families program; or
- (2) A non-recipient parent.

who is not a non-work eligible individual or an other work eligible individual."

2. By repealing the definition of "exempt household."

[""Exempt household" means a household in which all adult members or the minor parent who is head of a household, are exempt for one or more of the following reasons:

- (1) ~~Ill, incapacitated, or disabled, as determined by the department on the basis of medical or other competent evidence;~~
- (2) ~~Sixty years of age or older;~~
- (3) ~~Needed in the household, as determined by the department, to care for another household member who is ill, incapacitated, or disabled;~~
- (4) ~~In a one adult household, the parent or other relative of a child who is not of school age and is personally providing care for the child, unless child care is provided by the department under this part;~~
- (5) ~~Non-needy; or~~
- (6) ~~A single parent responsible for the care and custody of a child under the age of six months."]~~

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This subsection does not apply to general assistance to households without minor dependents. The standard of need shall equal the poverty level established by the federal government in 2006, prorated over a twelve-month period based on family size.

The assistance allowance provided shall be based on a percentage of the standard of need. For ~~[exempt households]~~ other work eligible households and non-work eligible households and households in which all caretaker relatives

are minors, living independently with minor dependents and attending school, the assistance allowance shall be set no higher than sixty-two and one-half per cent and no lower than forty-four per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than thirty-four per cent of the standard of need. The standard of need shall be determined by dividing the 2006 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91, and the final product shall be rounded down to determine the assistance allowance; provided that:

- (1) The department may increase or reduce the assistance allowance as determined in this subsection for ~~[non-exempt households]~~ work eligible households for the purpose of providing work incentives or services under part XI;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal funds;
- (3) Reductions in the assistance allowance shall be limited to no more than one per year; and
- (4) No ~~[non-exempt household,]~~ work eligible household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved June 9, 2009.)

ACT 102

H.B. NO. 271

A Bill for an Act Relating to Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that electronic communications make it possible to conduct transactions in new forms. Some of the earliest transactions governed by law are real estate transactions. Deeds, mortgages, and leases were memorialized by words on paper with manual signatures. However, technology has advanced and electronic communications are increasingly replacing paper documents. The law of real property needs to accommodate this change. The efficiency of real estate markets makes this imminently necessary.

The Uniform Electronic Transactions Act, codified as chapter 489E, Hawaii Revised Statutes, adjusted statute of frauds provisions to enable the use of electronic records and signatures in many transactions, including basic real estate transactions. The widespread enactment of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act make it possible to treat sales contracts, mortgage instruments, and promissory notes that are memorialized in electronic form, and with electronic signatures, as equal to paper documents that have manual signatures. However, real estate documents are excluded from those measures. This Act permits the registrar

of the bureau of conveyances to accept electronic documents with electronic signatures for recording.

This Act is not intended to affect land court registration pursuant to chapter 501, Hawaii Revised Statutes, except to permit the registrar of the bureau of conveyances to accept, make, keep, enter, file, index, store, archive, or convert any document received in electronic form by the registrar of the bureau of conveyances, or filed at the bureau of conveyances in electronic form.

The purpose of this Act is to permit the registrar of the bureau of conveyances to accept electronic documents with electronic signatures for recording.

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended as follows:

1. By adding a new part to read:

**“PART . UNIFORM REAL PROPERTY ELECTRONIC  
RECORDING ACT**

**§502- Definitions.** As used in this part:

“Document” means information affecting title to real property that is eligible to be entered into the public records, including any plan of land prepared pursuant to section 502-17.

“Electronic” means relating to technology having electric, digital, magnetic, wireless, optical, electromagnetic, or similar properties.

“Electronic document” means a document that is stored in an electronic medium.

“Electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a document and executed or adopted by a person with the intent of affixing a signature on the document.

“Paper document” means a document that is inscribed on a tangible medium such as paper.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**§502- Electronic document and electronic signature; validity.** (a) The registrar may accept an electronic document for recording. The electronic document shall be exempt from any requirement under this chapter that a document or instrument be:

- (1) The original document or instrument;
- (2) On paper, cloth, or other tangible medium; or
- (3) In writing.

(b) When a law requires as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) Any requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath shall be satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. It shall not be necessary to accompany an electronic signature with a physical or electronic image or a stamp, impression, or seal.

(d) In a proceeding, evidence of a document or signature shall not be excluded solely because it is in electronic form.

**§502- Recording of documents.** (a) Notwithstanding any other law to the contrary, and subject to rules adopted by the department of land and natural resources pursuant to chapter 91, the registrar may:

- (1) Accept, make, keep, enter, file, index, store, archive, and transmit electronic documents; provided that the registrar shall also continue to accept paper documents for recording and shall place entries for both types of documents in the same index;
- (2) Convert or copy paper documents that are accepted for recording into electronic form;
- (3) Convert or copy prior records of documents made in the bureau of conveyances into electronic form;
- (4) Accept fees for services rendered under this chapter electronically; and
- (5) Enter into agreements with other officials of states or political subdivisions thereof, or of the United States, on procedures or processes to electronically satisfy prior approvals and conditions precedent to recording and to facilitate the electronic payment of fees.

(b) This part shall also apply to any document that is received by the registrar of the bureau of conveyances or filed at the bureau of conveyances by the registrar of the land court pursuant to chapter 501.

(c) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this part, including to determine when an electronic document shall be considered delivered to the registrar pursuant to section 502-32.

(d) To keep the standards and practices of recording in the State in harmony with the standards and practices of recording offices in other jurisdictions that enact provisions substantially similar to this part, and to keep the technology used by the registrar compatible with technology used by recording offices in other jurisdictions that enact provisions substantially similar to this part, the department of land and natural resources, so far as is consistent with the provisions of this part, in adopting rules under chapter 91, shall consider:

- (1) The standards and practices of other jurisdictions;
- (2) The most recent standards adopted by national standard setting bodies such as the Property Records Industry Association;
- (3) The views of interested persons and governmental officials and entities;
- (4) The needs of jurisdictions of varying size, population, and resources; and
- (5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

**§502- Uniformity of application and construction.** In applying and construing this uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§502- Relation to federal Electronic Signatures in Global and National Commerce Act.** This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.”

2. By designating sections 502-1 to 502-4 as part I and amending the title before section 502-1 to read:



**“PART I. REGISTRAR, DEPUTY”**

3. By designating sections 502-7 to 502-8 as part II and amending the title before section 502-7 to read:

**“PART II. [GENERAL PROVISIONS]”**

4. By designating sections 502-11 to 502-27 as part III and amending the title before section 502-11 to read:

**“PART III. INDEXING OF RECORDS”**

5. By designating sections 502-31 to 502-34 as part IV and amending the title before section 502-31 to read:

**“PART IV. RECORDING”**

6. By designating sections 502-41 to 502-54 as part V and amending the title before section 502-41 to read:

**“PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS”**

7. By designating sections 502-61 to 502-64 as part VI and amending the title before section 502-61 to read:

**“PART VI. INTERLINEATIONS, ERASURES, ETC.”**

8. By designating sections 502-71 to 502-74 as part VII and amending the title before section 502-71 to read:

**“PART VII. RECORDS OF ACKNOWLEDGMENTS”**

9. By designating sections 502-81 to 502-85 as part VIII and amending the title before section 502-81 to read:

**“PART VIII. REQUIREMENT AND EFFECT OF  
ACKNOWLEDGING, RECORDING, NOT RECORDING”**

10. By designating sections 502-91 to 502-95 as part IX and amending the title before section 502-91 to read:

**“PART IX. PRIOR RECORDS”**

11. By designating section 502-101 as part X and amending the title before section 502-101 to read:

**“PART X. VETERANS CERTIFICATES”**

12. By designating section 502-111 as part XI and amending the title before section 502-111 to read:

**“PART XI. [OTHER PROVISIONS]”**

13. By amending section 502-21 to read:

**“§502-21 Recording of plans unlawful.** It shall not be lawful for the registrar to accept for record any plan of land, whether attached to, made a part of, or independent of, any deed, certified copy of judgment of condemnation, or other instrument; to the end and purpose that there shall be no plans recorded in the record books, but in substitution therefor there shall be a single method of filing plans in the archives of the bureau of conveyances; provided that where sketches, blueprints, or plans of land of a size not larger than 8 1/2 inches by 14 inches which legibly reproduces under photographic, electronic, or electrostatic methods are attached to instruments and made a part thereof by reference to the same in the instrument, the registrar may record the same in the record books

by means of the photographic recorder, on payment of the fee as provided in section 502-25.”

14. By amending section 502-22 to read:

**“§502-22 Copies of plans furnished by registrar.** The registrar shall furnish, when so requested, copies of any map or plan filed in accordance with sections 502-17 to 502-21, duly certified by the registrar’s seal of office, upon payment of the fee hereinafter mentioned. In addition, the registrar may authorize the department of accounting and general services to furnish, when so requested, copies of such maps or plans, subject to the payment of fees applicable to maps or plans furnished by the registrar. The copies of maps or plans may be furnished in photographic, electronic, or electrostatic form.”

15. By amending section 502-26 to read:

**“§502-26 Copies of instruments, certificates.** The registrar, when applied to, shall furnish an attested copy of any instrument or document recorded in the registrar’s office, or of any fact appearing upon the registrar’s records. The registrar may also issue nonattested documents or portions of any instrument or document recorded in the registrar’s office~~[-]~~ in photographic, electronic, or electrostatic form. The registrar may issue certificates of search or ~~[incumbrance]~~ encumbrance when personnel is available for the making of the certificate.”

16. By amending section 502-41 to read:

**“§502-41 Certificate of acknowledgment; natural persons, corporations.** Except as otherwise provided by ~~[sections 502-50 to 502-52,]~~ law, to entitle any conveyance or other instrument to be recorded, there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in ~~[any of sections]~~ section 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On .....(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that the person or persons executed the same as the person’s or persons’ free act and deed.

2. In the case of natural persons acting by attorney:

On .....(insert date), before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that the person executed the same as the free act and deed of said C.D.

3. In the case of corporations or partnerships:

On .....(insert date), before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer, partner, or agent of the corporation, or partnership) of (describing the corporation or partnership), and that the instrument was signed in behalf of the corporation (or partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or partnership).

4. In the case of a corporation acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On .....(insert date), before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed), did say that the person is the attorney-in-fact of C.D. (here name the corporation) duly appointed under power of attorney dated ....., recorded in book..., at page.../as document no. ....; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney-in-fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect".

5. In the case of a corporation acknowledging by another corporation as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On .....(insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer or agent of the corporation acting as attorney) of C.D. (here name the corporation acting as attorney) and that C.D. is the attorney-in-fact of E.F. (here name the corporation in whose behalf the attorney is acting) duly appointed under power of attorney dated ....., recorded in book..., at page.../as document no. ....; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect".

6. The following form may be used in lieu of any of the foregoing forms:

On .....(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment."

17. By amending section 502-92 to read:

**"§502-92 Copies of old records.** The registrar shall prepare photographic, electronic, or electrostatic copies of the records and record books in the bureau of conveyances which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently used or consulted without danger of destruction thereof, and certify to the correctness of such copies. The certified copies, and prints made from them and similarly certified, may be read in evidence with the same force and effect as the original instrument. The correctness of such copies is not conclusive but may be rebutted. All such records and record books from which the copies are made shall be deposited with the department of accounting and general services in its public archives. The registrar may convert into electronic form information or documents recorded before the registrar was given the authority to record electronic documents."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

(Approved June 9, 2009.)

## ACT 103

S.B. NO. 917

A Bill for an Act Relating to Third Party Liability for Medicaid.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Deficit Reduction Act of 2005, P.L. 109-171, made a number of amendments to Section 1902 of the Social Security Act intended to strengthen states' ability to identify and collect from liable third party payers.

The purpose of this Act is to make necessary amendments to state laws to comply with the federal amendments.

SECTION 2. Chapter 431L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431L- Insurer requirements.** Any health insurer as identified in section 431L-1 shall:

- (1) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under Title 42 United States Code Section 1396a (Section 1902 of the Social Security Act), as amended, upon the request of the State, information to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan in a manner prescribed by the State;
- (2) Accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for a health care item or service for which payment has been made for medical assistance under Title 42 United States Code Section 1396a (Section 1902 of the Social Security Act);
- (3) Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and
- (4) Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:
  - (A) The claim is submitted by the State within the three-year period beginning on the date on which the health care item or service was furnished; and
  - (B) Any action by the State to enforce its rights with respect to the claim is commenced within six years of the State's submission of the claim."

SECTION 3. Section 431L-1, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§431L-1]] Insurers prohibited from taking medicaid status into account.~~** Any health insurer (including a self-insured plan, a group health plan~~;~~ as defined in ~~[section]~~ Section 607(1) of the Employee Retirement Income Security Act of 1974, a health service benefit plan, a mutual benefit society, a fraternal benefit society ~~[and]~~, a health maintenance organization~~);~~, a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service) is prohibited, in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under Title 42 [U.S.C. section] United States Code Section 1396a (Section 1902 of the Social Security Act) herein referred to as medicaid, for this State, or any other state.”

SECTION 4. Section 431L-2, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§431L-2]] State's right to third party payments.~~** To the extent that payment has been made under the state plan for medical assistance for health care items or services furnished to an individual in any case where ~~[a third]~~ another party has a legal liability to make payment for such assistance, ~~[the State has in effect laws under which, to the extent that payment has been made under the state plan for medical assistance for health care items or services furnished to an individual,]~~ the State is considered to have acquired the rights of ~~[such]~~ the individual to payment by ~~[any]~~ the other party for ~~[such]~~ those health care items or services.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 9, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 104

S.B. NO. 1066

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The governing body of the authority shall consist of a board of directors having ~~[eleven]~~ thirteen voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing,

economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The director of business, economic development, and tourism, the chairperson of the board of land and natural resources, the president of the University of Hawaii, the mayor of the county of Hawaii, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the Hawaii strategic development corporation, or their designated representatives, shall serve as ex officio, voting members of the board. The tenants of the authority shall elect two members to the board from among the tenants of the authority, of which one member shall serve a two-year term, and one member shall serve a four-year term. In electing the tenant members, each tenant shall be entitled to cast one vote for each member position. The tenant members shall be recused from voting on setting lease rents, water rates, or utility rates, but may participate in discussions. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary.”

SECTION 2. The inaugural election for the two tenant representative positions on the board of directors of the natural energy laboratory of Hawaii authority shall be completed by October 1, 2009.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved June 10, 2009.)

## ACT 105

S.B. NO. 564

A Bill for an Act Relating to Fire Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 132-5, Hawaii Revised Statutes, is amended to read as follows:

**“§132-5 Right of entry for inspection; unlawful to obstruct.** The county fire chief or the chief’s designees, at all reasonable hours may enter any buildings, structures, or premises within the fire chief’s jurisdiction, except the interior of private dwellings, to make any inspection, investigation, or examination that is authorized to be made under this chapter. The county fire chief or the chief’s designees may enter any private dwelling whenever the fire chief or the chief’s designees have reason to believe that dangerous conditions creating a fire hazard exist in the dwelling. The county fire chief or the chief’s designees may enter any private dwelling when a fire has occurred in the dwelling. It shall be unlawful to obstruct, hinder, or delay any person having the right to make the inspection, investigation, or examination in the performance of duty.

The county fire chief or the chief’s designees ~~[shall]~~ are authorized to make an inspection of all ~~[state-owned or county-owned]~~ buildings and facilities, except state-owned airport facilities, the frequency of which shall be made in accordance with section 132-6, and shall make a report to the authorities

responsible for the maintenance of any ~~[state-owned or county-owned]~~ building or facility when it is found that a building or facility does not meet minimum standards of fire and safety protection.”

SECTION 2. Section 132-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each county fire chief, in person or by officers or members of the fire chief’s fire department designated by the fire chief for that purpose, shall inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings and state-owned airport facilities, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made ~~[at]~~:

(1) At least once each year at all public schools~~[-and]; and~~

(2) At least once every ~~[two]~~ five years, or as often as deemed practicable or necessary by the county fire chief~~[s]~~ at all other ~~[facilities]~~ buildings and premises to provide fire prevention and pre-fire planning within the jurisdiction of the county fire chief.

The State shall conduct fire and safety inspections at all state-owned airport facilities at least once a year.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 10, 2009.)

## ACT 106

H.B. NO. 1071

A Bill for an Act Relating to Mortgage Servicers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER MORTGAGE SERVICERS

§ -1 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

“Applicant” means a person applying for a license under this chapter.

“Borrower” means the obligor, maker, cosigner, or guarantor under a mortgage agreement.

“Commissioner” means the commissioner of financial institutions of this state.

“License” means a license issued under this chapter.

“Licensee” means a person licensed or required to be licensed under this chapter.

“Mortgage servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts under Section

10 of the Real Estate Settlement Procedures Act, 12 United States Code Section 2609, and for making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this chapter, servicing includes making payments to the borrower.

"Person" means an individual, partnership, corporation, association, or other organization.

"Residential mortgage loan" means a mortgage loan, home equity loan, or reverse mortgage loan, that is secured by a first or subordinate lien on residential real property located in Hawaii, including a refinancing of any secured loan on residential real property located in Hawaii, upon which:

- (1) There is or will be constructed a structure or structures designed principally for occupancy by one to four families, including individual units of condominiums and cooperatives; or
- (2) A manufactured home is located or will be placed on the real property, using proceeds of the loan.

**§ -2 License required.** (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) A person is engaged in the business of mortgage servicing if the person provides those services in this state even if the person providing services has no physical presence in the state.

**§ -3 Exemptions.** This chapter shall not apply to the following:

- (1) Any persons chartered or authorized under the laws of any state or federal law to engage in the activity of an insured depository institution as defined in Title 12 United States Code Section 1813(c)(2), including banks or savings associations, and operating subsidiaries of an insured depository institution;
- (2) Trust companies, credit unions, insurance companies, and financial service loan companies licensed by the State;
- (3) The Federal Deposit Insurance Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to Section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;
- (4) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; the Federal Deposit Insurance Corporation; the United States Department of Housing and Urban Development, and the Government National Mortgage Association and the Federal Housing Administration, and cases in which a mortgage insured under the National Housing Act, 12 United States Code Section 1701 et seq, is assigned to the United States Department of Housing and Urban Development; the National Credit Union Administration; the Farmers Home Administration or its successor agency under Public Law 103-354; and the Department of Veterans Affairs, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation for con-



servatorship or receivership of the servicer or an entity by which the servicer is owned or controlled; and

- (5) Any person making or acquiring contemporaneously no more than five residential mortgage loans with that person's own funds for that person's own investment.

**§ -4 License; fees; renewals.** (a) An applicant for licensure shall file an application on a form prescribed by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) The applicant shall submit any other information that the commissioner may require, including:

- (1) The applicant's form and place of organization;
- (2) The applicant's tax identification number; and
- (3) The applicant's proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members has ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony.

**§ -5 Duties of a mortgage servicer; disclosures; good faith.** (a) A mortgage servicer licensed or acting under this chapter, in addition to duties imposed by law, shall:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (3) Disclose to the commissioner in the application and yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities; and
- (4) File with the commissioner upon request a report in a form and format acceptable to the director detailing the servicer's activities in this state, including:
  - (A) The number of mortgage loans the servicer is servicing;
  - (B) The type and characteristics of such loans in this state;
  - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;
  - (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
  - (E) Information on foreclosures commenced in this state; and
  - (F) Any other information that the commissioner may require.
- (b) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:
  - (1) Any notice required by the Real Estate Settlement Procedures Act, 12 United States Code Section 2601 et seq., or by regulations promulgated thereunder;
  - (2) A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with this chapter and which shall not exceed those reported to the commissioner; and

- (3) A notice in a form and content acceptable to the commissioner that the servicer is licensed by the commissioner and that complaints about the servicer may be submitted to the commissioner.

(c) In the event of a delinquency or other act of default on the part of the borrower, the servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default, and, if the borrower replies, shall negotiate with the borrower, subject to the servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout relating to the delinquency.

**§ -6 Prohibited activities.** It shall be unlawful for any mortgage servicer in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal material facts, to make false promises, or to pursue a course of misrepresentation through its agents or otherwise;
- (2) To engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;
- (3) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act, 12 United States Code Sections 2605 and 2609, and regulations adopted thereunder by the Secretary of Housing and Urban Development; or
- (4) To fail to comply with applicable federal laws and regulations related to mortgage servicing.

**§ -7 License sanctions; suspension, revocation, denial, condition, and refusal to renew, reinstate, or restore.** In addition to any other actions authorized by law, the commissioner may suspend, revoke, deny, condition in any manner, or refuse to renew, reinstate, or restore, any license issued under this chapter, or fine any person holding a license issued under this chapter, for any violation of this chapter. All such orders shall be made pursuant to chapter 91.

**§ -8 Powers of commissioner.** In addition to any other acts or conditions provided by law, the commissioner may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and investigate and act upon written consumer complaints;
- (2) Grant, deny, forfeit, renew, reinstate, or restore the license of any mortgage servicer;
- (3) Revoke, suspend, or otherwise limit the license of any mortgage servicer for any violation of the provisions in this chapter, or any rule or order of, or agreement with the commissioner;
- (4) Report any violation of this chapter or violation of federal or state law to the United States Commissioner of Housing and Urban Development or other federal agency having jurisdiction over the licensee;
- (5) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the commissioner; and

- (6) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91.

§ -9 **Private right of action.** Nothing in this chapter shall be construed to preclude any individual or entity that suffers loss as a result of a violation of this chapter from maintaining a civil action to recover damages and, as provided by statute, attorney's fees.

§ -10 **Penalty.** Any person who violates any provision of this chapter may be subject to an administrative fine of not more than \$5,000 for each violation.

§ -11 **Compliance resolution fund.** Any law to the contrary notwithstanding, fees and fines collected by the commissioner shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved June 10, 2009.)

## ACT 107

H.B. NO. 1070

A Bill for an Act Relating to the Code of Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:3-507, Hawaii Revised Statutes, is amended to read as follows:

**"§412:3-507 Closing branch or agency; temporary closures~~[-]~~ and relocations.** (a) A Hawaii financial institution shall give the commissioner prior notice of its intent to close any branch or agency at least thirty days prior to the closing. The notice shall specify ~~[the]~~:

- (1) ~~The~~ intended date of closing~~[-, the]~~;
- (2) ~~The~~ reasons for the closing~~[-]~~; and ~~[a]~~
- (3) A certification by the secretary or other authorized officer of the institution that the decision to close was duly approved by its board of directors.

This notice may be satisfied by ~~[delivery]~~ providing to the commissioner ~~[of]~~ a copy of any notice pertaining to the closure given to the financial institution's appropriate federal regulatory agency.

(b) A Hawaii financial institution may temporarily close or relocate a branch or agency ~~[in the event of an emergency]~~ for a period of time up to one hundred eighty days, or a longer time period as determined necessary by the commissioner~~[-]~~ in the event of an emergency or for other good cause. For purposes of this section, an emergency means a situation of an unusual or compelling urgency that creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or other reason as determined by the commissioner. Written notice of a temporary closure or relocation

shall be provided to the commissioner ~~[upon closure]~~ and to the Hawaii financial institution's customers as soon as practicable, and ~~[notice shall be provided to the Hawaii financial institution's customers in the form of a sign posted at the primary public entrance of the branch or agency. The written notices]~~ shall state ~~[the]~~:

- (1) The reasons for the temporary closure[;] or relocation; [the]
- (2) The expected date of reopening[;]; and [information]
- (3) Information regarding where and how customers of the closed or relocated branch or agency will be accommodated during the temporary closure[;] or relocation.

The notice provided to the Hawaii financial institution's customers shall be in the form of a sign posted in a safe, conspicuous location on or in proximity to the primary public entrance of the branch or agency that has been or will be temporarily closed or relocated. Notice of the reopening of the branch or agency that was temporarily closed or relocated shall be provided to the commissioner within five days of the reopening. Written notice to the commissioner of temporary closure and subsequent reopening of a branch or agency shall not be required when the Hawaii financial institution reopens at that location within two business days."

SECTION 2. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To the extent specified herein, a bank may invest its own assets in ~~[securities and obligations of]~~:

- (1) [The] Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;
- ~~[(2)]~~ (3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, [Federal Home Loan Banks, Federal Home Loan Mortgage Corporation,] Federal Intermediate Credit Banks, Federal Land Banks, [Federal National Mortgage Association,] Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, [and] the United States Postal Service[;], and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mort-

gage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus; and

- (3) ~~Quasi-United~~ (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus."

SECTION 3. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To the extent specified herein, a savings bank may invest its own assets in ~~[securities and obligations of]~~:

- (1) ~~[The]~~ Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;
- (3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, ~~[Federal Home Loan Banks, Federal Home Loan Mortgage Corporation,]~~ Federal Intermediate Credit Banks, Federal Land Banks, ~~[Federal National Mortgage Association,]~~ Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, ~~[and]~~ the United States Postal Service~~[], and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;~~ provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus; and

- [(3) ~~Quasi-United~~] (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus."

SECTION 4. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To the extent specified herein, a savings and loan association may invest its own assets in ~~[securities and obligations of]~~:

- (1) ~~[The]~~ Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;

- [(2)] (3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, ~~[Federal Home Loan Banks, Federal Home Loan Mortgage Corporation,]~~ Federal Intermediate Credit Banks, Federal Land Banks, ~~[Federal National Mortgage Association,]~~ Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, ~~[and]~~ the United States Postal Service[s], and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus; and

- [(3) ~~Quasi-United~~] (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank,

and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus."

SECTION 5. Section 412:8-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To the extent specified herein, a trust company may invest its own assets in ~~[securities and obligations of]~~:

- (1) ~~[The] Securities and obligations of the~~ United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;
- [(2)] (3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, [Federal Home Loan Banks, Federal Home Loan Mortgage Corporation,] Federal Intermediate Credit Banks, Federal Land Banks, [Federal National Mortgage Association,] Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, [and] the United States Postal Service[;], and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the trust company's capital and surplus; and
- [(3)] ~~Quasi-United~~ (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the trust company's capital and surplus."

SECTION 6. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in ~~[securities and obligations of]~~:

- (1) ~~[The] Securities and obligations of the~~ United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) ~~Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;~~
- (3) ~~Securities and obligations of~~ United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, ~~[Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation,]~~ Federal Intermediate Credit Banks, Federal Land Banks, ~~[the Federal National Mortgage Association,]~~ the Financing Corporation, the Resolution Funding Corporation, the Student Loan Marketing Association, the Tennessee Valley Authority, ~~[and]~~ the United States Postal Service~~]; and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus; and~~
- (4) ~~Quasi-United~~ ~~Securities and obligations of quasi-United~~ States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.”

SECTION 7. Section 412:10-502, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a credit union may invest its own assets in ~~[securities and obligations of]~~:



- (1) [The] Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;
- (2) (3) Securities and obligations of United States government-sponsored agencies[;] which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, [Federal Home Loan Banks, Federal Home Loan Mortgage Corporation,] Federal Intermediate Credit Banks, Federal Land Banks, [Federal National Mortgage Association,] Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, [and] the United States Postal Service[;], and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount invested in obligations of any one issuer shall not exceed ten per cent of the credit union's capital; and
- (3) Quasi-United (4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in any one issuer shall not exceed ten per cent of the credit union's capital."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 10, 2009.)

#### Note

1. Prior to amendment "savings" appeared here.

A Bill for an Act Relating to Nurse Aides.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Act 226, Session Laws of Hawaii 2007, was enacted to provide for the certification and recertification of nurse aides who work in nursing facilities participating in medicare and medicaid programs and in other state-licensed and state-certified health care settings. Certification is a requirement under 42 United States Code Sections 1395i-3 and 1396r.

The purpose of this Act is to specify the renewal period for the recertification of certified nurse aides and the number of continuing education hours required for recertification by the director of human services.

SECTION 2. Section 346-46, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[[~~§346-46~~]]]~~ Certified nurse aides; training programs and recertification.**

The director shall:

- (1) Approve training programs for nurse aides and ensure that the training programs comply with all applicable federal and state requirements;
- (2) Approve and arrange for the recertification process for nurse aides who work in medicare or medicaid certified nursing facilities; ~~[and]~~
- (3) Approve and arrange for the recertification process for nurse aides who work in state-licensed or state-certified health care settings~~[-];~~  
and
- (4) Require recertification not less than every two years. The number of continuing education hours required for recertification shall not exceed twenty-four hours, except as specified by federal law.”

SECTION 3. Section 457A-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director of human services shall implement this chapter in accordance with 42 United States Code ~~[sections]~~ Sections 1395i-3 and 1396r, that relate to:

- (1) Training programs for nurse aides and recertification; ~~[and]~~ provided that recertification shall be required not less than every two years and the number of continuing education hours required for recertification shall not exceed twenty-four hours, except as specified by federal law; and
- (2) Disciplining of certified nurse aides employed in health care settings licensed or certified by the department of human services.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 10, 2009.)

## ACT 109

H.B. NO. 1678

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) The legislature finds that support for the development of renewable and efficient energy systems in the state, which is geographically isolated from sources of oil, continues to be in the public interest. The legislature further finds that LifeGrid Solutions, LLC, proposes to build and operate biofuel production and research facilities on the island of Oahu. LifeGrid Solutions, LLC, is engaging in the planning, design, and construction of a biofuel refinery capable of producing approximately one hundred million gallons of ethanol and approximately forty million gallons of biodiesel per year. The continuous production of alternative biofuels will allow the island of Oahu to replace a significant portion of the petroleum-based feedstocks currently used for things such as transportation and electric generation. In addition to the reduction of imported petroleum, LifeGrid Solutions, LLC, will also have a positive impact on Hawaii's municipal solid waste. Currently, Hawaii's landfills are operating at maximum capacity, requiring a large percentage of municipal solid waste to be transported to foreign locations for proper disposal. LifeGrid Solutions, LLC's facilities will be capable of using Hawaii's municipal solid waste as feedstock to produce renewable biofuels on the island of Oahu.

In addition, LifeGrid Solutions, LLC, will co-locate a research center with the production facility for further development of alternative biofuel technologies. The initial research will focus on the large-scale growth of algae used for alternative biofuel production. The research and development performed by LifeGrid Solutions, LLC, on the island of Oahu will serve to establish Hawaii as a center of excellence for the research, development, and production of renewable alternative biofuels.

The production of ethanol and biodiesel from renewable alternative sources coupled with an extensive research and development capability will:

- (1) Reduce the current dependence on imported fossil fuels for things such as transportation and electric generation, increasing Hawaii's domestic wealth, self-sufficiency, and energy security;
- (2) Reduce the current strain on Hawaii's landfills by using up to one million tons annually, which is seventy-five per cent of Hawaii's current annual municipal solid waste output, of municipal solid waste as a feedstock for biofuel production;
- (3) Provide a long term solution for the disposal of waste water treatment sludge by converting it into clean burning biofuels;
- (4) Help to meet Hawaii's renewable energy goals by coupling existing infrastructure with on-island production of renewable ethanol and biodiesel;
- (5) Reduce greenhouse-gas emissions through a renewable closed loop carbon system;
- (6) Provide significant reductions of hydrocarbon, sulfur, toxic compounds, and particulate matter emissions as opposed to energy produced from burning petroleum diesel;
- (7) Make Hawaii the center of excellence for the research and development of future biofuel technologies through collaborations with both industry and academic partners such as the University of Hawaii; and

- (8) Begin construction of a facility capable of reducing Hawaii's need to import up to one hundred million gallons per year of ethanol and further to produce forty million gallons per year of diesel.
- (b) The benefits from the LifeGrid Solutions, LLC, project will include:
  - (1) Encouraging local agricultural research, development, and cultivation of renewable energy feedstock crops in Hawaii to stimulate locally grown biodiesel feedstock crops, such as palm and jatropha, bringing fallow agricultural lands back into production;
  - (2) Providing ethanol and biodiesel at competitive prices as compared to imported alternatives;
  - (3) Increasing the efficiency of municipal solid waste disposal by using the waste as a feedstock for the production of biofuel;
  - (4) Increasing Hawaii's ability to dispose of waste water treatment sludge that has no useful application;
  - (5) Having a positive environmental impact by reducing the overall carbon footprint by producing fuels for transportation and electric generation;
  - (6) Increasing construction project spending over a period of multiple years;
  - (7) Solidifying Hawaii as the leader in biofuel research and development, further making Hawaii the preferred biofuel proving ground; and
  - (8) Assisting the State, the city and county of Honolulu, and the federal government to meet their goals and mandates for energy efficiency and renewable energy use.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The legislature further finds that LifeGrid Solutions, LLC's work in creating alternative energy for the State is an industrial enterprise defined in part V, chapter 39A, Hawaii Revised Statutes, and may be assisted through the issuance of special purpose revenue bonds.

**SECTION 2.** Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$80,000,000, in one or more series, for the purpose of assisting LifeGrid Solutions, LLC, or a partnership in which LifeGrid Solutions, LLC, is a general partner, with the planning, design, and construction of a biofuel refinery and research facility on the island of Oahu with primary production volumes of forty million gallons per year of biodiesel and future capability of one hundred million gallons per year of ethanol. LifeGrid Solutions, LLC, will build, operate, and maintain either three separate facilities or a single consolidated facility for the production and research of both ethanol and biodiesel in the aforementioned volumes on the island of Oahu. This initial biofuel production will be used for both transportation and electric generation, helping Hawaii meet its goals and mandates for energy efficiency and renewable energy use as well as reducing Hawaii's burden of municipal solid waste disposal. These benefits, along with continued research and development of alternative biofuels, will ensure that Hawaii becomes and remains the leader in biofuel technologies.

The legislature finds and determines that LifeGrid Solutions, LLC's planning, design, and construction of a biofuel refinery and research facility to supply a renewable source of ethanol and biodiesel for transportation and electric generation, and to foster continued research on biofuel technology

constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. As a condition precedent to the issuance of special purpose revenue bonds under this Act, LifeGrid Solutions, LLC, or its affiliates, shall give priority to utilizing Hawaii grown fuel stock when available and shall not import fuel stock that comes from farms where forests have been cleared to accommodate the growing of such crops. To receive bond financing under this Act, LifeGrid Solutions, LLC, shall be required to import fuel stock produced only from sustainable sources; provided that LifeGrid Solutions, LLC, and its affiliates shall document that sustainable sources are utilized; provided further that the documentation shall be transmitted or otherwise made available to the department of business, economic development, and tourism. The department of business, economic development, and tourism shall certify the documentation submitted and shall notify the department of budget and finance in writing as to whether LifeGrid Solutions, LLC, and its affiliates are in compliance with this section prior to the issuance of any special purpose revenue bonds being issued pursuant to this Act.

SECTION 6. Notwithstanding any law to the contrary, the interest in bonds issued under this Act shall be subject to state and federal income tax laws.

SECTION 7. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 8. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 110

H.B. NO. 1628

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Bioenergy Hawaii, LLC.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make electric energy

available to members of the general public by the sale of electric energy to an electric utility serving the area.

The legislature also finds that the benefits of the development of cogeneration facilities include:

- (1) Reduced greenhouse gas emissions;
- (2) Reduced landfill waste streams;
- (3) Reduced transportation and disposal costs;
- (4) Creation of local technical and semi-technical jobs; and
- (5) Renewable energy for local communities through distributed generations.

The legislature also finds that BioEnergy Hawaii, LLC, is engaged in the development of a cogeneration facility project that will sell the electric energy it produces to electric utilities serving the public, by processing non-fossil fuel feedstock to produce electricity, and selling thermal fluid from the process of generating electricity to private entrepreneurs.

The legislature further finds that BioEnergy Hawaii, LLC, may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V of chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

**SECTION 2.** Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting BioEnergy Hawaii, LLC, a Hawaii limited liability company, or a partnership in which BioEnergy Hawaii, LLC, is a general partner, for the establishment of a cogeneration facility and related energy production facilities. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to electric utilities. Thermal fluid output of this plant and related energy production facilities shall be made available to existing and planned manufacturing processing entrepreneurs in the area. The legislature hereby finds and determines that the activities and facilities of BioEnergy Hawaii, LLC, constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

**SECTION 3.** The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

**SECTION 4.** The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 111

H.B. NO. 427

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist One Planet Pacific Energy, LLC, a Processing Enterprise.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the development of alternative energy and renewable fuel technologies is in the best interests of the public. One Planet Pacific Energy, LLC, specializes in the engineering, financing, development, and management of alternative energy and renewable fuel technologies. One Planet Pacific Energy, LLC, proposes to construct a five hundred ton per day gasification facility to convert solid waste into synthetic gas to utilize material solid waste from the construction and demolition material solid waste landfill located in Nanakuli, Oahu, Hawaii. The landfill processes construction and demolition materials only, and does not have an impact on the municipal waste stream processed at the HPower facility on Oahu. The facility would use a proprietary gasification technology that has been proven effective in commercial applications in multiple countries throughout the world.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public's interest and for the benefit of the public's health, safety, and general welfare.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, to assist One Planet Pacific Energy, LLC, with the planning, designing, constructing, and equipping of, and the acquisition of lands for, a gasification facility adjoining the construction and demolition material solid waste landfill located in Nanakuli, Oahu, Hawaii. The legislature hereby finds and determines that the planning, designing, constructing, and equipping of, and the acquisition of lands for, such a facility constitutes a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The special purpose revenue bonds shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption. In making this determination, the department shall comply with federal

law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 112

H.B. NO. 1627

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make electric energy available to the public from the sale of electricity to a utility company. The legislature further finds that Carbon Diversion Inc. is engaged in the development of cogeneration facilities that will sell electricity in this manner by processing non-fossil fuel feedstock, using a material reduction process by pressurized pyrolysis and gasification, for direct production of energy-related carbon products and fuels and an indirect production of electricity.

The legislature finds that the benefits of the development of cogeneration facilities include the:

- (1) Reduction of greenhouse gas emissions;
- (2) Reduction of landfill waste streams;
- (3) Reduction of transportation and disposal costs;
- (4) Creation of local technical and semi-technical jobs; and
- (5) Production of renewable energy for local communities through distributed generation.

The legislature further finds that Carbon Diversion Inc.'s work in creating alternative energy for the State is an industrial enterprise defined in part V, chapter 39A, Hawaii Revised Statutes, and may be assisted through the issuance of special purpose revenue bonds.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, for the purpose of assisting Carbon Diversion Inc., or a partnership in which Carbon Diversion Inc., is a general partner, with the establishment of cogeneration and related energy-production facilities at various locations in the state. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to electric utilities serving the public. Thermal fluid output of this plant and related energy-production facilities shall be made available for use by members of the general public by sale to existing and planned manufacturing and processing entrepreneurs in the area.

The legislature finds and determines that the activity and facilities of Carbon Diversion Inc. constitute a project as defined in part V, chapter 39A,



Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 113

H.B. NO. 426

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Seawater Air Conditioning Projects on Oahu.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that support for the development of renewable energy and efficient energy systems and use of sustainable energy in the state, which is geographically isolated from sources of oil, continues to be in the public interest.

The legislature further finds that Honolulu Seawater Air Conditioning, LLC, proposes to build seawater air conditioning district cooling systems on the island of Oahu. Honolulu Seawater Air Conditioning, LLC, is engaged in the planning, design, and construction of a seawater air conditioning district cooling facility and chilled water distribution system in downtown Honolulu using cold, deep seawater as the primary cooling source.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. The legislature further finds that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act to assist Honolulu Seawater Air Conditioning, LLC, in constructing the portion of this district cooling project consisting of its chilled water distribution system and balance-of-system components and structures, will make the development of a seawater air conditioning system more economically feasible and provide numerous benefits, including the following:

- (1) Providing customers with reduced and stable cooling costs;
- (2) Using an abundant, infinite, sustainable energy resource – cold, deep seawater – to provide more than ninety per cent of the cooling load;
- (3) Eliminating the need for cooling towers and, as a result, reducing potable water use, toxic chemical use, and the production of sewage;
- (4) Greatly reducing the use of harmful chemicals (refrigerants) used in conventional cooling systems;
- (5) Potentially providing energy savings of seventy per cent, or more, compared to conventional air conditioning systems;
- (6) Having lower operating and maintenance costs than individual building air conditioning systems;
- (7) Eliminating the need for up to 0.63 kilowatts of electricity generation capacity for each ton of cooling capacity;
- (8) Potentially generating millions of dollars in construction project spending that will result in the creation of construction jobs and many other long-term, well-paid jobs;
- (9) Reducing the flow of moneys out of the state for oil and retaining those funds in Hawaii's economy. Other local economic development benefits will accrue from money that stays in Hawaii and is not used to purchase oil; and
- (10) Helping the State of Hawaii, the city and county of Honolulu, and the federal government to meet goals and mandates for energy efficiency and renewable energy use.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$77,000,000, in one or more series, for the purpose of assisting Honolulu Seawater Air Conditioning, LLC, a Hawaii company, in designing and constructing the district cooling project. The legislature hereby finds and determines that the design and construction of this district cooling project constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 114

H.B. NO. 1483

A Bill for an Act Relating to Special Purpose Revenue Bonds for Better Place Hawaii, Inc.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the development of alternatives to fossil fuel-based modes of transportation is essential to Hawaii's long-term energy goals. Currently, about five hundred forty million gallons of petroleum-based liquid fuels are consumed annually for highway purposes, contributing to our continued dependence on oil and the endangerment of our environment.

Electric vehicles are viable renewable energy alternatives that offer consumers cost-effective and carbon-free transportation. Better Place Hawaii, Inc., is a company dedicated to achieving a world free of its dependence on oil, and is developing the transportation infrastructure to support electric vehicles in Hawaii. The renewable energy transportation infrastructure that Better Place Hawaii, Inc., seeks to develop would support the State's renewable energy goals.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is beneficial to the public health, safety, and general welfare of the state.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$45,000,000, in one or more series, to assist Better Place Hawaii, Inc., a Delaware corporation, in the planning, designing, construction, and development of transportation infrastructure, equipment, and apparatus to support electric vehicles in Hawaii. The legislature hereby finds and determines that the activity and facilities of Better Place Hawaii, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2014, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination,

the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2014.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 11, 2009.)

## ACT 115

S.B. NO. 851

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) An employer receiving an assignment order shall send the amounts withheld to ~~[the designated obligee or, if requested, to]~~ this State’s child support enforcement agency within five working days after the obligor is paid. The employer shall begin withholding no later than the first pay period occurring within seven business days following the date a copy of the order is mailed to the employer. As used in this subsection, the term “business day” means a day on which the employer’s office is open for regular business. The employer shall withhold funds as directed in the order, except that when an employer receives an income withholding order issued by another state, the employer shall send the amounts withheld to that state’s agency administering a program under Title IV-D of the Social Security Act and apply the income withholding law of the state of the obligor’s principal place of employment in determining:

- (1) The employer’s fee for processing an income assignment order;
- (2) The maximum amount permitted to be withheld from the obligor’s income under ~~[section]~~ Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income assignment order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each obligor.

Within two working days after receipt of the amounts withheld by the employer, the child support enforcement agency shall disburse those amounts to the obligee for the benefit of the child, except that the child support enforcement agency may delay the distribution of collections toward arrearages until the resolution of any timely request for a hearing with respect to such arrearages.”

SECTION 2. Section 576D-10, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-10 Collection and disbursement of child support; direct payment exception.** (a) The agency shall collect and disburse child support payments when an order requires the collection and disbursement. In the event of any default by the obligor, upon notification of the default by the custodial parent, the agency shall proceed against the obligor for the arrearage and the agency shall have jurisdiction over future child support payments. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this account shall be used:

- (1) For related costs of the maintenance and operation of the account; and
- (2) To improve the child support enforcement agency's ability to promptly disburse payments to the custodial parent.

The balance shall be deposited into the state treasury to the credit of the general fund.

(b) Any child support payments required by a court order effective on June 30, 1986, to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

(c) Other than for child support payments disbursed to the department of human services or to another agency administering a program under Title IV-D of the federal Social Security Act, the custodial parent shall elect to receive child support payments from the agency by means of an electronic benefits transfer system or by directly depositing the amount into an account designated by the custodial parent. If an election is not made, the agency shall determine whether the disbursement of child support payments shall be by means of an electronic benefits transfer system or by an alternate method of disbursement that complies with the time frame required under Title IV-D of the federal Social Security Act.

~~[(e)]~~ (d) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

~~[(d)]~~ (e) The court may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or
- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's conclusion.

~~[(e)]~~ (f) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent.

The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving public assistance, including ~~[but not limited to]~~ public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or if either parent applies for services from the agency, the agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

~~[(f)]~~ (g) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of public assistance, including ~~[but not limited to]~~ public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or after the custodial parent applies for services from the agency, and after receiving proper notification of the change of payee to the agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including ~~[but not limited to]~~ canceled checks or receipts.

~~[(g)]~~ (h) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D of the federal Social Security Act or where the dependents of the obligor receive public assistance, including ~~[but not limited to]~~ public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes child support for a period during which public assistance was provided to the child or children by the department of human services.

~~[(h)]~~ (i) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to ~~[section]~~ sections 576D-7 and [section] 576E-15.

~~[(i)]~~ (j) The alternative arrangement for direct payment shall become effective upon approval and filing by the court. For any order approved pursuant to this section on or after October 1, 1998, each party ~~[must]~~ shall send a certified copy of the order to the state case registry established under section 576D-6.

~~[(j)]~~ (k) The agency shall not be required to maintain records while an order obtained pursuant to this section is in effect, except for any payments received and disbursed by the agency.”

SECTION 3. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read:

“(f) A lien shall be enforceable by the child support enforcement agency or its designated counsel ~~[or]~~, by the obligee, or by another agency administering a program under Title IV-D of the federal Social Security Act, in the following manner:

- (1) By suit in the appropriate court;
- (2) By bringing an action in an administrative tribunal;
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

A notice of child support lien shall state the name and the last four digits only of the social security number (if available) of the obligor, the child support enforcement case number, the amount of the lien and the through date (if applicable),

the accruing monthly amount, and the date on which the order or judgment regarding child support or public assistance debt was recorded with the bureau of conveyances. The notice shall require that whoever is served with a notice of child support lien either satisfy the lien or obtain a release of the lien prior to disbursing any funds to the obligor. The method of service of a notice of child support lien shall be by certified mail, return receipt requested, or by personal delivery to the individual or entity referred to. A copy of the notice of child support lien shall also be sent to the obligor by regular mail at the obligor's last known address. Upon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the child support enforcement agency. For service effectuated by certified mail, an electronic copy or facsimile of the signature of the served individual or entity on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual or entity. A notice of child support lien may be amended from time to time until extinguished or released, each amendment taking effect upon proper service. A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

(g) A lien shall be enforceable by the child support enforcement agency or its designated counsel or by another agency administering a program under Title IV-D of the Social Security Act without the necessity of obtaining a court order in the following manner:

- (1) By intercepting or seizing periodic or lump-sum payments from:
  - (A) A state or local agency, including unemployment compensation, and other benefits; and
  - (B) Judgments, settlements, and lotteries;
 

provided that unemployment compensation benefits may be intercepted only to the extent authorized by ~~[section]~~ Section 303(e) of the Social Security Act;
- (2) By attaching and seizing assets of the obligor held in financial institutions;
- (3) By attaching public and private retirement funds; and
- (4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

These procedures shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal."

SECTION 4. Section 576D-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In response to a notice of lien or levy, the financial institution ~~[shall surrender or encumber assets held by such institution to the agency], if holding assets~~ on behalf of any noncustodial parent who is subject to a child support lien arising by operation of law against real and personal property for delinquent support owed by the noncustodial parent who resides in or owns property in the ~~[State and those liens shall be accorded]~~ state shall accord those liens full faith and credit when the agency or other entity seeking to enforce the lien has complied with the procedural rules of the State and, if applicable, section 501-102[-], and shall surrender those assets to the agency or other entity seeking to enforce the lien, or encumber those assets in accordance with the lien."

SECTION 5. Section 576E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A true copy of the administrative order, along with a true copy of the return of service, shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued, or in the office of the clerk of the circuit court in the circuit where a previously established support order was filed. For service effectuated by certified mail, an electronic copy or facsimile of the signature of the served individual on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court.”

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The income withholding order issued pursuant to subsection (a) or the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall be effective immediately after service upon an employer of a copy of the order or the notice to withhold child support, which service may be effected by regular mail, by personal delivery, or by transmission through electronic means. Thereafter, the employer shall for each pay period, withhold from the income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the ~~[designated obligee, or upon request, to the]~~ child support enforcement agency of this State, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order or the notice to withhold child support as being payable during the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the notice to withhold child support or the disbursement thereof.”

SECTION 7. Section 584-8, Hawaii Revised Statutes, is amended to read as follows:

“**§584-8 Jurisdiction; venue.** (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(b) A person who has sexual intercourse in this [State] state thereby submits to the jurisdiction of the courts of this [State] state as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service outside this [State] state or by service by certified or registered mail, postage prepaid, with return receipt requested.

(c) In addition to any other method of service provided by statute or court rule, if the defendant is not found within the circuit, service may be effectuated by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

(d) The action may be brought in the county in which the child, the mother, or the alleged father resides or is found or in which the child was born or, if



the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

(e) For service effectuated by registered or certified mail, an electronic copy or facsimile of the signature of the served individual on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 2009.)

## ACT 116

S.B. NO. 932

A Bill for an Act Relating to Infectious Disease Testing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. An estimated twenty-five per cent of individuals infected with human immunodeficiency virus (HIV) do not know they are infected, because they have not been tested for HIV. In 2006, the Centers for Disease Control and Prevention recommended HIV screening as a routine part of medical care. However, research and experience indicate that the requirements for health care providers to obtain written informed consent and to provide pre-test HIV counseling are significant barriers to HIV testing. The purpose of this Act is to remove these identified barriers yet continue to allow for an individual to decline testing.

SECTION 2. Section 325-16, Hawaii Revised Statutes, is amended to read as follows:

**"§325-16 Informed consent for testing or disclosure. (a) A health care provider may subject a person's body fluids or tissue to a test for the presence of human immunodeficiency virus infection after:**

- (1) Orally explaining to the person that certain personalized test results are maintained by the department of health, according to strict confidentiality protocols established by law;**
- (2) Orally advising the person that free and anonymous human immunodeficiency virus testing is available through the department of health and certain community agencies;**
- (3) Providing the person reasonable opportunity to decline the test; and**
- (4) Receiving the person's express oral consent to the test.**

**A health care provider may, for the purpose of obtaining consent to the test and in lieu of the oral-consent procedure specified in this subsection, use a written form that, at a minimum, provides equivalent information to that prescribed by paragraphs (a)(1) and (a)(2); provided that the health care provider shall allow the person reasonable opportunity to decline consent by declining to sign the form.**

**[(a)] (b) No [health care provider,] blood bank, plasma center, or any other public or private agency, institution[,], or individual (except a health care provider acting pursuant to subsections (a) or (c)), may subject a person's body fluids or**

tissue to a test for the presence of human immunodeficiency virus [(HIV)] infection unless the subject of the test ~~[first provides]~~:

- (1) Provides informed written consent pursuant to the standards in section 671-3 to the testing[. Any person in this State whose body fluids or tissue are subject to a test for the presence of HIV infection shall be]; and
- (2) Is afforded the opportunity to receive [(HIV)] human immunodeficiency virus pre-test counseling by the party ordering or requesting that the test be performed [and shall be afforded the opportunity to obtain];

provided that the person tested shall be provided with the test results[. The counseling provided shall be consistent with guidelines established by the department.] by the blood bank, plasma center, agency, institution, or individual subjecting the person to the test. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for [(HIV)] human immunodeficiency virus testing, and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing conducted pursuant to subsection [(b)(1)] (c)(1) and (2) shall be exempted from the counseling requirements of this subsection.

~~[(b)]~~ (c) Consent to testing is not required for any of the following:

- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of [(HIV in order)] human immunodeficiency virus to assure medical acceptability of the gift for the purpose intended;
- (2) The department of health, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for [(HIV)] human immunodeficiency virus infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
- (3) Anonymous testing carried out at [(HIV)] human immunodeficiency virus test sites established by the department of health; provided that informed oral consent is obtained;
- (4) Testing of body fluids or tissue ordered by a third party, so long as that third party, including ~~[but not limited to]~~ an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health care provider prior to any release of the requested test results to the third party~~[:]. The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results:~~
- (5) Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's [(HIV)] human immunodeficiency virus status is necessary to make a diagnosis or determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of [(HIV)] human immunodeficiency virus has been performed pursuant to this paragraph, and the ~~[patient shall be provided the opportunity to obtain the test results and appropriate counseling:]~~ health care provider shall provide all

positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results:

- (6) A treating physician may order ~~[an HIV]~~ a human immunodeficiency virus test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible ~~[HIV]~~ human immunodeficiency virus infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of ~~[HIV]~~ human immunodeficiency virus has been performed pursuant to the provisions of this paragraph ~~[- and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling;].~~ The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to the individual being tested and afford the health care worker the opportunity to obtain the test results and appropriate post-test counseling;
- (7) A person who has been charged, or a juvenile who has been charged, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's ~~[HIV]~~ human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17; and
- (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's ~~[HIV]~~ human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17.

~~[(e) Confidentiality.]~~ (d) The confidentiality of all records held pursuant to this section is governed by section 325-101.

~~[(d) Civil penalty.]~~ (e) Any person or institution who wilfully violates any provision of this section shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the person whose records were released. This subsection shall not be construed as limiting the right of any person or persons to recover actual damages.

~~[(e)]~~ (f) The department of health shall make available to health care providers current information on accessing anonymous human immunodeficiency virus testing for the purpose of providing that information to patients.

(g) The department ~~[shall]~~ may adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.

(h) As used in this section, "health care provider" means a physician or surgeon licensed under chapter 453, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and their employees. "Health care provider" shall not mean any nursing institution or nursing service conduct-

ed by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such an institution or service."

SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after the assault, of the availability of human immunodeficiency virus [~~(HIV)~~] testing for the victim, the availability of counseling for the victim, and the right of the victim to request that the person charged with an offense listed in section [~~325-16(b)(7)~~] 325-16(c)(7), involving the victim, be tested for [~~HIV~~] human immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the charged person shall be provided [~~HIV~~] human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the charged person.

Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after a conviction, of the availability of human immunodeficiency virus [~~(HIV)~~] testing for the victim, the availability of counseling for the victim, and the right of the victim to demand that the person convicted of an offense listed in section [~~325-16(b)(8)~~] 325-16(c)(8), involving the victim, be tested for [~~HIV~~] human immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the convicted person shall be provided [~~HIV~~] human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the convicted person."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved June 12, 2009.)

## ACT 117

S.B. NO. 967

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
  - (A) Raw opium;
  - (B) Opium extracts;
  - (C) Opium fluid;
  - (D) Powdered opium;
  - (E) Granulated opium;

- (F) Codeine;
  - (G) Ethylmorphine;
  - (H) Etorphine hydrochloride;
  - (I) Hydrocodone;
  - (J) Hydromorphone;
  - (K) Metopon;
  - (L) Morphine;
  - (M) Oxycodone;
  - (N) Oxymorphone; ~~and~~
  - (O) Thebaine;
  - (P) Dihydroetorphine;
  - (Q) Oripavine; and
  - (R) Tincture of opium;
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;
  - (3) Opium poppy and poppy straw;
  - (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof; and
  - (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy)."

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Stimulants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (3) Phenmetrazine and its salts; ~~and~~
- (4) Methylphenidate~~[-]~~; and
- (5) Lisdexamfetamine, its salts, isomers, and salts of its isomers."

SECTION 3. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Clostebol (4-Chlorotestosterone);
- (3) Dehydrochloromethyltestosterone;
- (4) Dihydrotestosterone (4-dihydrotestosterone);
- (5) Drostanolone;
- (6) Ethylestrenol;
- (7) Fluoxymesterone;

- (8) Formebolone (Formyldienolone);
- (9) Mesterolone;
- (10) Methandranone;
- (11) Methandriol;
- (12) Methandrostenolone (Methandienone);
- (13) Methenolone;
- (14) Methyltestosterone;
- (15) Mibolerone;
- (16) Nandrolone;
- (17) Norethandrolone;
- (18) Oxandrolone;
- (19) Oxymesterone;
- (20) Oxymetholone;
- (21) Stanolone (Dihydrotestosterone);
- (22) Stanozolol;
- (23) Testolactone;
- (24) Testosterone;
- (25) Trenbolone; [and]
- (26) 3[beta], 17-dihydroxy-5a-androstane;
- (27) 3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (28) 5[alpha]-androst-3, 17-dione;
- (29) 1-androstenediol (3[beta], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (30) 1-androstenediol (3[alpha], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (31) 4-androstenediol (3[beta], 17[beta]-dihydroxy-androst-4-ene);
- (32) 5-androstenediol (3[beta], 17[beta]-dihydroxy-androst-5-ene);
- (33) 1-androstenedione ([5[alpha]]-androst-1-en-3, 17-dione);
- (34) 4-androstenedione (androst-4-en-3, 17-dione);
- (35) 5-androstenedione (androst-5-en-3, 17-dione);
- (36) Bolasterone (7[alpha], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (37) Calusterone (7[beta], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (38) [Delta]1-dihydrotestosterone (a.k.a. '1-testosterone') (17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (39) Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostanol[2,3-c]-furazan);
- (40) 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one;
- (41) 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one);
- (42) 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one);
- (43) Mesterolone (1[alpha]methyl-17[beta]-hydroxy-[5[alpha]]-androst-3-one);
- (44) Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one);
- (45) Methandriol (17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-5-ene);
- (46) Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (47) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxy-5a-androstane;
- (48) 17[alpha]-methyl-3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (49) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-4-ene;
- (50) 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one);
- (51) Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one);

- (52) Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9-11-trien-3-one);
- (53) 17[alpha]-methyl-[Delta] 1-dihydrotestosterone (17b [beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (a.k.a. '17-[alpha]-methyl-1-testosterone');
- (54) 19-nor-4-androstenediol (3[beta], 17[beta]-dihydroxyestr-4-ene);
- (55) 19-nor-4-androstenediol (3[alpha], 17[beta]-dihydroxyestr-4-ene);
- (56) 19-nor-5-androstenediol (3[beta], 17[beta]-dihydroxyestr-5-ene);
- (57) 19-nor-5-androstenediol (3[alpha], 17[beta]-dihydroxyestr-5-ene);
- (58) 19-nor-4-androstenedione (estr-4-en-3, 17-dione);
- (59) 19-nor-5-androstenedione (estr-5-en-3, 17-dione)<sup>1</sup>;
- (60) Norbolethone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one);
- (61) Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one);
- (62) Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one);
- (63) Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one);
- (64) Tetrahydrogestrinone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4, 9, 11-trien-3-one); and
- [26] (65) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth, except the term "anabolic steroid" does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for nonhuman administration. If any person prescribes, dispenses, or distributes an anabolic steroid intended for administration to nonhuman species for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph."

SECTION 4. Section 329-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of public safety shall register an applicant to manufacture, dispense, prescribe, or distribute controlled substances included in sections 329-14, 329-16, 329-18, 329-20, and 329-22 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department of public safety shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
- (6) Suspension [or], revocation, or ~~surrender~~ of the applicant's federal registration to manufacture, distribute, prescribe, or dispense controlled substances as authorized by federal law; and

- (7) Any other factor relevant to and consistent with the public health and safety.”

SECTION 5. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of [refill] dispensing is permissible between pharmacies on a one time basis~~[- subject to the following requirements:]~~ only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber’s authorization. Transfers are subject to the following requirements:

- (1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
  - (A) Write or otherwise place the word “VOID” on the face of the invalidated prescription;
  - (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
  - (C) Record the date of the transfer and the name of the pharmacist transferring the information;
- (2) The pharmacist receiving the transferred prescription information shall~~[:]~~ reduce to writing the following:
  - (A) Write or otherwise place the word “transfer” on the face of the transferred prescription;
  - (B) Record all information required to be on a prescription, including:
    - (i) The date of issuance of original prescription;
    - (ii) The original number of refills authorized on original prescription;
    - (iii) The date of original dispensing;
    - (iv) The number of valid refills remaining and ~~[date of last refill;]~~ dates and locations of previous refills;
    - (v) The pharmacy’s name, address, DEA registration number, and original prescription number from which the prescription information was transferred; ~~[and]~~
    - (vi) The name of transferor pharmacist; and
    - (vii) The pharmacy’s name, address, and Drug Enforcement Administration registration number, along with the prescription number from which the prescription was originally filled;
- (3) Both the original and transferred prescription shall be maintained for a period of five years from the date of last refill;
- ~~[(4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State;] and~~
- ~~[(5)]~~ (4) Any pharmacy electronically accessing a prescription record shall satisfy all information requirements of a manual mode prescription transferal.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.”



SECTION 6. Section 329-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is unlawful for any person:

- (1) Who is subject to part III to distribute, administer, prescribe, or dispense a controlled substance in violation of section 329-38 or rules authorized under section 329-31; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold to the master of such ship or person in charge of such aircraft only in accordance with the provisions set forth in 21 Code of Federal Regulations, Sections 1301, 1305, and 1307, adopted pursuant to Title 21, United States Code, Section 821;
- (2) Who is a registrant to manufacture a controlled substance not authorized by the registrant’s registration or to distribute or dispense a controlled substance not authorized by the registrant’s registration to another registrant or another authorized person;
- (3) To refuse or fail to make available, keep, or furnish any record, notification, order form, prescription, statement, invoice, or information in patient charts relating to the administration, dispensing, or prescribing of controlled substances;
- (4) To refuse any lawful entry into any premises for any inspection authorized by this chapter;
- (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter or chapter 712, part IV;
- (6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, ~~[without first obtaining proper identification and documenting, by signature on a log book kept by the practitioner or pharmacist, the identity of and the type of identification presented by]~~ except under the following circumstances:

- (A) When dispensing a controlled substance directly to an individual, the practitioner or pharmacist shall first obtain and document, in a log book or an electronic database, the full name, identification number, identification type, and signature, whether by actual signature or by electronic signature capture device, of the individual obtaining the controlled substance. If the individual does not have any form of proper identification, the pharmacist shall verify the validity of the prescription and identity of the patient with the prescriber, or their authorized agent, before dispensing the controlled substance[-]; and
- (B) For mail order prescriptions, the practitioner or pharmacist shall not be subject to subparagraph (A); provided that all other requirements of chapter 329 shall apply and that the practitioner or pharmacist, as part of the initial registration process of an individual in a mail order prescription drug plan and prior to the controlled substance being dispensed, shall obtain all identification information, including the full name, identification number, identification type, signature, and a photocopy of a form of proper identification of the individual obtaining

the controlled substance. The practitioner or pharmacist shall also comply with other requirements set forth by rule.

For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, identification number, and signature of the individual obtaining the controlled substance;

- (7) Who is a practitioner to predate or pre-sign prescriptions to facilitate the obtaining or attempted obtaining of controlled substances; or
- (8) Who is a practitioner to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance when not physically in the State."

SECTION 7. Section 329-52, Hawaii Revised Statutes, is amended to read as follows:

**"§329-52 Administrative inspections [and warrants].** [(a) Issuance and execution of administrative inspection warrants shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;
- (2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
  - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
  - (B) Be directed to a person authorized by section 329-51 to execute it;
  - (C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
  - (D) Identify the item or types of property to be seized, if any;
  - (E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be

made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.

(b) The department of public safety may make administrative inspections of controlled premises in accordance with the following provisions:

- (1) For purposes of this section only, "controlled premises" means:

- (A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

- (B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

- (2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) an officer or employee designated by the department of public safety, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

- (3) When authorized by an administrative inspection warrant, an officer or employee designated by the department of public safety may:

- (A) Inspect and copy records required by this chapter to be kept;

- (B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein; and, except as provided in subsection (b)(5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

- (C) Inventory any stock of any controlled substance therein and obtain samples thereof.

- (4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

- (A) If the owner, operator, or agent in charge of the controlled premises consents;

- (B) In situations presenting imminent danger to health or safety;

- (C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

- (D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

- (E) In all other situations in which a warrant is not constitutionally required.

- (5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.]

(a) The administrator or any of the administrator's agents may make administrative inspections of controlled premises upon presenting appropriate credentials to the registrant or persons subject to parts III, IV, VIII, and IX of this chapter or their agents in accordance with the following provisions:

- (1) Inspections shall be at reasonable times and within reasonable limits and in a reasonable manner of controlled premises and vehicles in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61 and all pertinent equipment, finished and unfinished materials, containers, and labeling therein to determine if this chapter is being violated;
- (2) The administrator or any of the administrator's agents shall have access to and may copy any and all records, books, logs, or documents pertaining to the administering, prescribing, dispensing, or sale of controlled substances or regulated chemicals designated under this chapter without a warrant; and
- (3) The administrator or any of the administrator's agents may inventory any stock of any controlled substance or regulated chemical designated under section 329-61 and secure samples or specimens of any drug, device, or chemical not seized as evidence by paying or offering to pay for the sample. The administrator shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

(b) An inspection of records authorized by this section shall not extend to financial data relating to pricing of items other than shipment and sale amounts, unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(c) For purposes of this section, "controlled premises" means:

- (1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and
- (2) Places, including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 2009.)

#### Note

1. Missing end parenthesis.

## ACT 118

H.B. NO. 28

A Bill for an Act Relating to Dead Human Bodies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 327-38, Hawaii Revised Statutes, is amended to read as follows:

**“§327-38 Prohibitions; penalty.** (a) No person shall give, offer, or promise any money or other things of value to any other person in consideration of receiving a dead human body.

(b) No person shall provide a dead human body to any other person in consideration of any money or other things of value, or any offer or promise of money or other things of value.

(c) No person shall display a dead human body for commercial purposes; provided that this subsection shall not apply to a display of a dead human body that:

- (1) Has been dead for more than eighty years;
- (2) Consists solely of human teeth or hair;
- (3) Is part of the ordinary display or viewing of the deceased at a funeral establishment or part of a similar funeral or memorial service;
- (4) Is an object of religious veneration;
- (5) Is an object of research or educational display in the possession of any federal, state, or county agency, any public or private institution of higher learning accredited under federal or state law, or any private entity in receipt of a federal, state, or county grant for health-related research; or
- (6) Is in the possession of a museum facility.

~~[(b)]~~ (d) No university, hospital, or institution shall use a body received under this part for any purpose except medical education and research.

~~[(e)]~~ (e) Any person who violates this section shall be fined not more than ~~[\$1,000]~~ \$5,000 or imprisoned not more than one year, or both.

~~[(f)]~~ As used in this section:

“Dead human body” means:

- (1) An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem; provided that the determination of death be made in accordance with accepted medical standards; and
- (2) Includes plastinated human bodies or remains, including tissue, organs, and other body parts, that are preserved from decay by replacing the water and fats in the human remains with a polymer.

“Museum facility” means a public or private nonprofit institution that:

- (1) Is accredited by the American Association of Museums or is part of an accredited college or university;
- (2) Is organized on a permanent basis for essentially educational or aesthetic purposes; and
- (3) Owens or uses tangible objects, cares for those objects, and exhibits them to the general public on a regular basis.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 2009.)

## ACT 119

S.B. NO. 292

A Bill for an Act Relating to Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State is undergoing a significant and possibly protracted economic downturn in tandem with the national and global economic and financial crises. Numerous jobs have been lost, a number of large and small companies have declared bankruptcy or left the state, and many families have suffered foreclosure on their over-mortgaged houses. In the past year, the council on revenues has consistently reduced its forecasts of Hawaii's tax revenues. Across-the-board spending restrictions have already been put in place in state government and a general hiring freeze has already been implemented except in areas that impact public health and safety.

In the face of these extraordinary conditions, the State cannot proceed with business as usual. All resources must be examined to address critical state-wide health, safety, and educational needs.

Accordingly, the purpose of this Act is to generate additional general funds to ensure the delivery of critical services statewide by reallocating the distribution of moneys in the Hawaii tobacco settlement special fund under section 328L-2, Hawaii Revised Statutes, including depositing a certain percentage into the state general fund.

SECTION 2. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) ~~[Twenty-four and one-half]~~ Fifteen per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3;
- (2) ~~[Thirty-five]~~ Twenty-five per cent shall be appropriated to the department for purposes of section 328L-4;
- (3) ~~[Twelve and one-half]~~ Six and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5; ~~and~~
- (4) Twenty-eight per cent shall be appropriated into the university revenue-undertakings fund created in section ~~[304A-2167;]~~ 304A-2167.5 to be applied to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu, for the succeeding fiscal year; and the payment of annual operating expenses incurred by the new medical school facility; provided that any moneys in excess of the amounts required under this paragraph shall be transferred in the succeeding fiscal year ~~in the following amounts:~~

- (A) ~~To] to the emergency and budget reserve fund under section 328L-3[—eighty per cent of the excess; and~~
- (B) ~~To the Hawaii tobacco prevention and control trust fund under section 328L-5—twenty per cent of the excess.]; and~~
- (5) Twenty-five and one-half per cent shall be deposited to the credit of the state general fund.”

SECTION 3. Section 328L-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury the emergency and budget reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

- (1) ~~[Twenty-four and one-half per cent of the moneys]~~ Moneys received from the tobacco settlement moneys under section ~~[328L-2(b)(1); 328L-2; and~~
- (2) Appropriations made by the legislature to the fund.”

SECTION 4. Section 328L-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§328L-4] Use of funds appropriated to the department.** The department, immediately upon receipt of the ~~[thirty-five per cent of]~~ moneys appropriated pursuant to section 328L-2(b)(2) shall:

- (1) Transfer up to ten per cent of the total moneys received by the State from tobacco settlement moneys to the department of human services for the children’s health insurance program; and
- (2) Expend the remainder of the moneys received by the department for health promotion and disease prevention programs, including but not limited to, maternal child health and child development programs, promotion of healthy lifestyles (including fitness, nutrition, and tobacco control), and prevention oriented public health programs.

For purposes of paragraph (2), the director shall convene an advisory group that shall be separate from the tobacco prevention and control advisory board, to strategically plan the development and implementation of preventive systems to achieve measurable outcomes and to make recommendations for the expenditure of these moneys. The advisory group shall be composed of nine members with expertise in the programs under paragraph (2), and shall be selected at the discretion of the director.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2015; provided that section 328L-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of Act 264, Session Laws of Hawaii 2007.

(Approved June 12, 2009.)

## ACT 120

S.B. NO. 1352

A Bill for an Act Relating to Bureau of Conveyances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, adopted during the regular session of 2007, identified serious shortcomings relating to the bureau of conveyances' operational mismanagement, potential loss of revenue, and potential areas of vulnerability. The joint legislative investigative committee recognized that automation of certain functions in the bureau of conveyances may address one of the major underlying problems: work backlog. Modernizing through electronic recordation will improve efficiency; however, a gradual approach will prevent the existing work backlog from increasing due to a shift in procedures.

The purpose of this Act is to ease the backlog in bureau of conveyances and land court recording and registration by:

- (1) Transferring fee simple time share interest from the land court system (Torrens) to the regular system;
- (2) Allowing an owner of a fee interest in land registered in the land court system to transfer the interest to the regular system;
- (3) Allowing electronic recording of instruments in the land court and regular system; and
- (4) Establishing a pilot program to implement electronic recording of fee simple time share interests.

SECTION 2. Chapter 501, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART II. DEREGISTRATION**

**§501-A Deregistration of fee interests.** (a) Upon presentation to the assistant registrar for filing or recording of any instrument, document, or paper conveying or encumbering a fee time share interest or any interest therein, or upon the written request under subsection (d) of the registered owner of the fee interest in registered land, the assistant registrar shall not register the same, but shall:

- (1) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the fee interest in the registered land or the registered land in which the fee time share interest includes an undivided interest; provided that:
  - (A) Prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title; and
  - (B) If separate certificates of title have been issued for individual fee time share interests in the time share plan, the assistant registrar shall record in the bureau of conveyances, pursuant to chapter 502, the certificate of title for each fee time share interest in the time share plan;
- (2) Record in the bureau of conveyances, pursuant to chapter 502, the instrument, document, paper, or written request for deregistration presented to the assistant registrar for filing or recording. The in-



strument, document, paper, or request shall be recorded immediately after the certificate or certificates of title; and

(3) Cancel the certificate of title.

(b) The registrar or assistant registrar shall note the recordation and cancellation of the certificate of title in the registration book and in the records of the application for registration of the land that is the subject of the certificate of title. The notation shall state the bureau of conveyances document number for the certificate of title so recorded, the certificate of title number, and the land court application number, map number, and lot number for the land that is the subject of the certificate of title so recorded.

(c) No order of court shall be required prior to or in connection with the performance of any of the foregoing actions.

(d) The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter. Any written request for deregistration shall include proof of title insurance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.

**§501-B Effect of deregistration.** (a) Upon the recordation in the bureau of conveyances of a certificate of title pursuant to section 501-A:

(1) The deregistered land shall no longer be registered land for purposes of this chapter;

(2) No instruments, documents, or papers relating solely to deregistered land shall be filed or recorded with the assistant registrar pursuant to this chapter, but shall instead be recorded in the bureau of conveyances pursuant to chapter 502; and

(3) Except as otherwise expressly provided in this chapter, chapter 502 shall apply to the deregistered land.

(b) Recordation of a certificate of title pursuant to section 501-A shall not disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title before that recording, and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system.

**§501-C Effect of deregistration in specific cases.** Notwithstanding section 501-B(a)(3), the following documents, instruments, and papers need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

(1) Any document, instrument, or paper assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:

(A) A mortgage;

(B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the recordation of

- the certificate of title, any agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
- (C) A correction deed, correction mortgage, or other document, instrument, or paper correcting a document, instrument, or paper registered pursuant to this chapter;
  - (D) A lien or claim of lien on a fee time share interest held or claimed by a time share owners association, an association of apartment owners, or other homeowners' association or a lien or claim on an interest in other deregistered land held by a lienor or person claiming a lien;
  - (E) A lease that demises a fee time share interest or interest in other deregistered land;
  - (F) An order of court, attachment, writ, or other process against a fee time share interest or interest in other deregistered land;
  - (G) A mechanic's or materialman's lien or other lien upon a fee time share interest or interest in other deregistered land;
  - (H) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to a power of sale under section 667-5, or otherwise; or
  - (I) A power of attorney given by the owner of a fee time share interest or interest in other deregistered land or the vendor or vendee under an agreement of sale for the sale of a fee time share interest or interest in other deregistered land, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest or interest in other deregistered land, or another party holding a claim or encumbrance against or an interest in a fee time share interest or interest in other deregistered land;
- (2) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to a power of sale under section 667-5, or otherwise; and
  - (3) Any declaration annexing property to, any declaration deannexing property from, any amendment or supplement to, correction of, or release or termination of, any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
    - (A) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing or governing a time share plan, or the bylaws of a time share owners association, notice of time share plan, or other time share instrument;
    - (B) A declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of apartment owners, the condominium map, any declaration of merger and any instrument effecting a merger; provided that if only some of the condominium apartments

are included in the time share plan, then it shall be necessary to register, and to note on the certificate of title for any apartment not included in the time share plan:

- (i) Any declaration annexing property to the condominium property regime;
  - (ii) Any declaration deannexing property from the condominium property regime;
  - (iii) Any instrument effecting a merger of two or more condominium projects or two or more phases of a condominium project; and
  - (iv) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in subparagraph (B)(i) through (iii), the declaration of condominium property regime, the bylaws of the association of apartment owners, the condominium map, or any declaration of merger; and
- (C) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof, any declaration of merger and any instrument effecting a merger; provided that if only some of the parcels of land covered by the declaration constitutes deregistered land, and if one or more of the remaining parcels constitute registered land, then it shall be necessary to register, and to note on the certificate of title for any registered land:
- (i) Any declaration annexing property to the declaration;
  - (ii) Any declaration deannexing property from the operation of the declaration; and
  - (iii) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in subparagraph (C)(i) or (ii), the declaration of covenants, conditions, restrictions, or the bylaws of the homeowners association.

**§501-D Chain of title of deregistered land.** (a) A certificate of title recorded pursuant to section 501-A shall constitute a new chain of record title in the registered owner of any estate or interest as shown on the certificate of title so recorded, subject only to the following:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title so recorded;
- (2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;
- (3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title as recorded, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date

on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;

- (4) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;
  - (5) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of the way has been determined;
  - (6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;
  - (7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any liability and the lien therefor (other than for labor and material furnished in the improvement of the land, which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of the assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is recorded in the bureau of conveyances pursuant to chapter 502 within the three-year period; and provided further that if there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;
  - (8) The possibility of reversal or vacation of the decree of registration upon appeal;
  - (9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; and
  - (10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D.
- (b) For purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate of title if the notation:
- (1) References a document by name or number that contains an encumbrance; and
  - (2) Indicates that the referenced document contains an encumbrance to which the deregistered land is subject.
- (c) All instruments, documents, and papers noted on a certificate of title recorded pursuant to section 501-A shall have the same force and effect as if they had been recorded in the bureau of conveyances pursuant to chapter 502 as of the date, hour, and minute of reception noted on the certificate of title pursuant to section 501-107; provided that:
- (1) No instrument, document, or paper shall have any greater or other effect after the certificate of title is recorded pursuant to section 501-A, as constructive notice or otherwise, than it had or acquired at the time it was registered pursuant to this chapter or made; and

- (2) Nothing in this part shall be construed as giving any greater or other effect, as constructive notice or otherwise, to any instrument, document, or paper recorded in the bureau of conveyances pursuant to chapter 502 prior to the recordation of the certificate of title pursuant to section 501-A as to any land, than was provided by the laws of this State (including this chapter and other laws regarding registered land) in effect at the time the instrument, document, or paper was recorded.

(d) If a certificate of title recorded pursuant to section 501-A relates to more than one fee time share interest or more than one interest in other deregistered land, then subsection (a) shall apply to each interest separately and only those items described in subsection (a) that encumbered a particular interest prior to recordation of the certificate of title will continue to encumber that interest after the recordation.

**§501-E Status of fee time share interest and other interest in deregistered land as real property.** Nothing in this part shall affect the status of a fee time share interest or other interest in deregistered land as real property.

**§501-F Dual recording involving deregistered land.** Nothing in this part shall prevent or prohibit the registration of an instrument that conveys, assigns, or affects both registered land and deregistered land.

**§501-G Reference to prior recorded instrument.** Any instrument conveying or otherwise dealing with deregistered land and which requires a reference to a prior recorded instrument may satisfy the requirements of section 502-33 by reference to the land court document number (in the case of a document recorded pursuant to chapter 501) or to the book and page or bureau of conveyances document number (in the case of a document recorded pursuant to chapter 502) of the instrument to which reference is made.

**§501-H Legal incidents of deregistered land.** Nothing in this part shall in any way be construed to relieve deregistered land or the owners of deregistered land from:

- (1) Any rights incident to the relation of husband and wife;
- (2) Liability to attachment or mesne process or levy on execution;
- (3) Liability to any lien of any description established by law on the deregistered land, or in the interest of the owner in the deregistered land;
- (4) The right to change the laws of descent;
- (5) The rights of partition between coparceners and other cotenants;
- (6) The right to take the same by eminent domain;
- (7) Liability to be recovered by a trustee in bankruptcy under the provisions of law relating to preferences;
- (8) Any other rights or liabilities created by law and applicable to the owner of a condominium apartment that is part of a condominium property regime established on registered land and which is not used in a time share plan, except as otherwise expressly provided in this part; or
- (9) Any other rights or liabilities created by law and applicable to the deregistered land, except as otherwise expressly provided in this part.

**§501-1 Jurisdiction for matters pertaining to deregistered land.** The land court shall have jurisdiction over all matters relating to instruments required by this part to be registered pursuant to this chapter. Where any party is in doubt as to whether an instrument must be registered, the question shall be referred to the land court for decision; and the court, after notice to all parties and a hearing, shall enter an order determining the question. Notice to the owner of a fee time share interest shall be given by mailing notice to the association of time share owners required to be established pursuant to section 514E-29, and the association shall represent the owners in any matters and proceedings, without prejudice to the right of any individual owner to appear and be heard as a separate party. Except as expressly provided in this section, nothing in this part shall deprive the land court of exclusive jurisdiction pursuant to section 501-1 over registered land, or any interest therein, other than registered land that becomes deregistered land. The circuit court shall have jurisdiction, pursuant to section 603-21.5(a)(3), over:

- (1) All matters relating to instruments required by this part to be recorded pursuant to chapter 502;
- (2) All other matters pertaining to deregistered land (except those in which jurisdiction is vested in the land court pursuant to this section); and
- (3) All matters as to which jurisdiction would otherwise lie in the land court in part and in the circuit court in part."

SECTION 3. Chapter 501, Hawaii Revised Statutes, is amended by designating sections 501-1 to 501-248 as part I, entitled:

**"PART I. GENERAL PROVISIONS"**

SECTION 4. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**"§657- Deregistered land.** In no event shall the period of limitations provided in this part begin prior to the recordation of the certificate of title for deregistered land."

SECTION 5. Section 501-20, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read as follows:

"Deregistered land" means land that is the subject of a certificate of title recorded pursuant to section 501-A.

"Fee time share interest" means a time share interest, other than a leasehold time share interest, that consists of or includes a present, undivided interest in registered land, including an undivided interest in one or more fee simple condominium apartments established in whole or in part on registered land."

2. By amending the definition of "signature" to read:

"Signature" means the name of a person as written by the individual [or], the affixing of a mark or finger or toe print[-], or electronic signature as that term is defined in chapter 489E."

SECTION 6. Section 501-71, Hawaii Revised Statutes, is amended to read as follows:

**“§501-71 Decree of registration; conditional when; quieting title, exceptions; reopened when.** (a) If the court after a hearing finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that since filing the application, the title of the applicant has not been encumbered in any manner, then a decree of confirmation and registration as prayed for shall be entered.

(b) If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to the filing of the application, the title has been encumbered, then the title shall be registered subject to the encumbrances so found.

(c) If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in the application, that the title is proper for registration, and that subsequent to filing the application, the applicant has conveyed away all or any portion or portions of the premises or interest therein sought to be registered, then a decree of confirmation and registration shall be entered, covering the entire premises, confirming title in the applicant and the person or persons deriving their title through the applicant, to the premises or interest in accordance with the applicant's or their respective true ownership of the whole or any portion or portions thereof or interest therein at the time of filing the decree, and subject to all encumbrances affecting all or any portion thereof.

(d) Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in section 501-82. It shall be conclusive upon and against all persons, including the State, whether mentioned by name in the application, notice, or citation, or included in the general description “to all whom it may concern.” The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees ~~[- subject, to the right of]~~, except that any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud [to] may file a petition for review within one year after the entry of the decree[- provided no], unless an innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal ~~[hereinbefore]~~ herein provided. Any person aggrieved by the decree in any case may pursue remedy by action of tort against the applicant or any other person for fraud, in procuring the decree.

(e) Deregistration pursuant to sections 501-A to 501-I shall not alter or revoke the conclusive nature or effect of a decree of registration, which shall continue to quiet the title to the deregistered land as to all claims arising prior to the recording of the certificate of title pursuant to section 501-A, except claims as would not otherwise be barred under this chapter if the lands were not registered.”

SECTION 7. Section 501-86, Hawaii Revised Statutes, is amended to read as follows:

**“§501-86 Registration runs with land.** The obtaining of a decree of registration, and the entry of a certificate of title, shall be regarded as an agreement running with the land, and binding upon the applicant and all the applicant's successors in title, that the land shall be and forever remain registered land, and subject to this chapter ~~[and of all acts in amendment hereof], except as provided in part II.~~”

SECTION 8. Section 501-108, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that no deed, mortgage, lease, or other voluntary instrument shall be accepted by the assistant registrar for registration unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration. If the certificate reference in the instrument is not current, an endorsement of the current certificate of title shall be required.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number ~~[and]~~, the certificate of title number, and, in the case of deregistered land, the bureau of conveyances document number in the spaces provided therefor wherever required.

~~[The]~~ Except as otherwise provided in section 501-A:

- (1) The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee[-];
- (2) The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate[-];
- (3) The original certificate shall be stamped "canceled"[-]; and
- (4) The deed of conveyance shall be filed or recorded and endorsed with the number and place of registration of the certificate of title of the land conveyed."

2. By amending subsection (d) to read:

"(d) The assistant registrar may refuse to file or record any instrument that will not reproduce legibly under photographic, electronic, or electrostatic methods, or that is of a size larger than eight and one-half inches by eleven inches, or that contains a schedule, inventory sheet, or map in excess of that size. Notwithstanding any other law to the contrary, the assistant registrar may accept an electronic instrument in lieu of an original instrument with original signatures subject to the requirements set forth in rules adopted by the supreme court of the State of Hawaii consistent with this section and chapter 489E."

SECTION 9. Section 501-116, Hawaii Revised Statutes, is amended to read as follows:

**"§501-116 Mortgage registration necessary.** The owner of any interest in registered land may mortgage ~~[such]~~ the interest by executing a mortgage thereof. Such a mortgage may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. ~~[The]~~ Except as provided in part II, the mortgage, and all instruments assigning, extending, discharging, and otherwise dealing with the mortgage, shall be registered and shall take effect upon the title of the mortgaged property only from the time of registration."

SECTION 10. Section 501-171, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto shall file or record with the assistant registrar of the land court a correct state-



ment of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the devisee or devisees, and thereupon the assistant registrar shall cancel the certificate issued to the testator, and, except as provided in part II, enter a new certificate to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law shall file or record with the assistant registrar a correct statement of the full names of the heirs, the residence or post office address of each, and their marital status, a certified copy of the letters appointing the personal representative showing the powers of the personal representative, or a certified copy of an acknowledgment of authority, and either a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution or a deed from the personal representative to the heir or heirs, and thereupon the assistant registrar shall cancel the certificate issued to the intestate, and, except as provided in part II, enter a new certificate to the heir or heirs entitled thereto."

SECTION 11. Section 502-7, Hawaii Revised Statutes, is amended by amending the definition of "signature" to read as follows:

"Signature" means the name of a person as written by the individual [or], the affixing of a mark or finger or toe print[-], or electronic signature as that term is defined in chapter 489E."

SECTION 12. Section 502-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All moneys in excess of \$500,000 remaining on balance in the bureau of conveyances special fund on June 30 of each year shall lapse to the credit of the state general fund[-]; provided that any balance of funds collected pursuant to section 16 of Act , Session Laws of Hawaii 2009, shall not lapse to the credit of the state general fund. On July 1 of each year, the director of finance is authorized to transfer any excess funds in the bureau of conveyances special fund to the state general fund."

SECTION 13. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

**"§502-31 Recording, method.** (a) The registrar shall make or cause to be made an entire literal copy of all instruments, with their original signatures, required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument with the original signature, the date of its registry and the document number.

(b) The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of all natural persons signing in their individual capacity shall be typewritten, stamped, legibly printed by hand, or by a mechanical or electrical printing method beneath all signatures. The provisions of this

~~[paragraph]~~ subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(c) The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by eleven inches, or which contains a schedule or inventory sheet in excess of such size.

(d) This section shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules adopted by the department of land and natural resources, pursuant to chapter 91.

(e) All instruments to be recorded shall include the original signature and the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be returned beginning one and one-half inch from the left margin and not exceeding three and one-half inches per line. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. Indorsements, if any, may be made on a conforming fly sheet. No papers or materials, written or otherwise, shall be secured or attached to a page in any manner that may conceal any other written text. If an instrument consists of more than one page, each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The registrar of conveyances shall be permitted to remove any rivets affixed to any instrument. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic, electronic, or electrostatic methods. Notwithstanding any other law to the contrary, the registrar may accept an electronic instrument in lieu of an original instrument with original signatures subject to the requirements set forth in rules adopted by the department of land and natural resources consistent with this section and chapter 489E."

SECTION 14. Section 634-51, Hawaii Revised Statutes, is amended to read as follows:

**"§634-51 Recording of notice of pendency of action.** In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or incumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if the person claims through a party to the action; provided that in the case of registered land, section 501-151 ~~[and]~~, sections 501-241 to 501-248, and sections 501-A to 501-I shall govern.

This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court."

SECTION 15. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

**“§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it the Hawaii tax identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the debtor has no social security number, Hawaii tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor's attorney of record in the action [shall], at the expense of the debtor, shall execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102 [and], sections 501-241 to 501-248, and sections 501-A to 501-I shall govern.”

**SECTION 16.** As of July 1, 2009, the department of land and natural resources shall assess a transaction fee of \$5 to be charged for each recording in the bureau of conveyances and in the office of the assistant registrar of the land court for services rendered by the bureau of conveyances pursuant to part II of chapter 501 and chapter 502, Hawaii Revised Statutes. The transaction fees collected shall be deposited to the credit of the bureau of conveyances special fund established under section 502-8, Hawaii Revised Statutes, and shall be used to support purchases of hardware, system design, and staff training related to automation of the bureau of conveyances.

**SECTION 17. Fee time share interests electronic recordation; two-year pilot program; establishment.** (a) The bureau of conveyances shall implement an integrated electronic filing system for electronic recordation of fee time share interests. The bureau of conveyances shall provide staff as needed for the implementation of the program. The goals of the program shall be to:

- (1) Design and implement an integrated electronic filing system for electronic recordation of fee time share interests; and
- (2) Identify necessary employee training, changes in applicable administrative rules or procedures, and other relevant information necessary for the pilot program to be expanded to the entire regular system.

(b) The bureau of conveyances shall submit a written report on the implementation of the integrated electronic filing system for electronic recordation of fee time share interests to the legislature no later than twenty days prior to the convening of the 2012 regular session. The report shall include findings and

recommendations, costs expended to date, and the estimated cost of implementation on a permanent basis for the entire regular system.

SECTION 18. There is created in the bureau of conveyances an employer-employee working group to resolve any issues that may arise in the implementation of section 2 of this Act and to make recommendations for the recovery of lost revenue due to deregistration of time shares. The working group shall be chaired by the registrar of the bureau of conveyances. Membership in the working group shall include the registrar of the bureau of conveyances or the registrar's designee, the land court registrar or the registrar's designee, and representatives of bureau of conveyances employees to be chosen by the employees according to a process prescribed by the registrar of the bureau of conveyances. The registrar of the bureau of conveyances shall prescribe rules and procedures for the conduct of the working group. The working group shall submit a report of its findings and activities to the legislature no later than twenty days before the commencement of the 2010 regular session.

SECTION 19. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

In printing this Act, the revisor of statutes shall substitute in section 502-8, Hawaii Revised Statutes, of section 12, the corresponding number of this Act.

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 21. This Act shall take effect on July 1, 2009; provided that section 2 of this Act shall take effect on July 1, 2011, and shall be repealed on December 31, 2014; provided further that section 16 of this Act shall take effect on July 1, 2009, and shall be repealed on the effective date of administrative rules adopted by the department of land and natural resources that address the establishment of transaction fees for each recording in the bureau of conveyances and in the office of the assistant registrar of the land court; provided further that section 17 of this Act shall take effect on January 1, 2012; and provided further that section 18 of this Act shall take effect upon its approval and shall be repealed on January 31, 2010.

(Approved June 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 121**

S.B. NO. 876

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-75, Hawaii Revised Statutes, is amended to read as follows:

**“§88-75 Ordinary disability retirement.** (a) Upon application of a member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board, after a medical examination of the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following ~~such~~ the approval; provided that retirement shall become effective on the first day of the month following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 2. Section 88-82, Hawaii Revised Statutes, is amended to read as follows:

**“§88-82 ~~[Appeal of decision of medical board;]~~ Petition for contested case hearing regarding disability retirement or accidental death benefits; attorney’s fees and costs ~~[reimbursable]~~.** (a) A member or applicant who is not satisfied with the preliminary decision of the ~~[medical]~~ board to grant or deny an application for disability retirement benefits or accidental death benefits based on the certifications and findings of the medical board may ~~[appeal the decision to]~~ file a petition for contested case hearing with the board ~~[of trustees]~~ within sixty days after receiving written notification of the preliminary decision of the ~~[medical]~~ board. ~~[The right of appeal to the board of trustees shall apply to all decisions and recommendations which the medical board is authorized to make.]~~

(b) ~~If,~~ in the event of an appeal of a decision of the medical board,] the member or applicant is the prevailing party in the contested case, and disability retirement or accidental death benefits are awarded to [a] the member or applicant by the board ~~[of trustees]~~ or court of the appropriate jurisdiction under section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), ~~[88-335, 88-337,]~~ 88-334, 88-336, or 88-339, the member or applicant shall be ~~[reimbursed]~~ paid reasonable attorney’s fees together with any costs payable by the system. ~~[If an appeal is had, the]~~ The attorney’s fees ~~[or]~~ and costs shall be subject to the approval of the board ~~[of trustees]~~ or approval by ~~[the appellate]~~ a court ~~[deciding the appeal.]~~ of appropriate jurisdiction after evidence has been provided by the member or applicant regarding the reasonableness of the claimed attorney’s fees and costs.”

SECTION 3. Section 88-98, Hawaii Revised Statutes, is amended to read as follows:

**“§88-98 Return to service of a retirant.** (a) Any retirant who returns to employment requiring active membership in the system shall be reenrolled as an

active member of the system in the same class from which the retirant originally retired and the retirant's retirement allowance shall be suspended.

- (1) If the retirant returns to service before July 1, 1998, and again retires, the retirant's retirement allowance shall consist of:
    - (A) For members with fewer than three years of credited service during the member's period of reemployment, the allowance to which the member was entitled under the retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula under section 88-74 in existence at the time of the member's latest retirement; or
    - (B) For members with three or more years of credited service during the member's period of reemployment, the allowance computed as if the member were retiring for the first time; provided that in no event shall the allowance be less than the amount determined in accordance with subparagraph (A); and
  - (2) If the retirant returns to service after June 30, 1998, and again retires, the retirant's retirement allowance shall be computed in accordance with paragraph (1)(A), regardless of the number of years of service in the reemployment period.
- (b) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, as amended by Act 131, Session Laws of Hawaii 2002, and is reemployed by the State or a county in any capacity shall:
- (1) Have the retirant's retirement allowance suspended;
  - (2) Forfeit the special retirement incentive benefit and any related benefit provided by this chapter; and
  - (3) Be subject to the age and service requirements under section 88-73 when the member again retires.
- (c) If a retirant's maximum retirement allowance upon the retirant's initial retirement was subject to the limits on maximum retirement allowance under section 88-74:
- (1) The limit shall apply to the computation of the retirant's maximum retirement allowance for the retirant's period of service during the retirant's reemployment, so that the sum of:
    - (A) The per cent by which the retirant's average final compensation for the retirant's years of service prior to the retirant's initial retirement is multiplied to determine the retirant's maximum retirement allowance upon the retirant's initial retirement; and
    - (B) The per cent by which the retirant's average final compensation for any period of reemployment after the retirant's initial retirement is multiplied to determine the retirant's maximum retirement allowance for the period of reemployment,shall not exceed the limit, under section 88-74, on the per cent by which the retirant's average final compensation may be multiplied for the purpose of determining the retirant's maximum retirement allowance. For example, if a retirant's maximum retirement allowance upon the retirant's initial retirement was limited by section 88-74 to eighty per cent of the retirant's average final compensation,

and the retirant retired with a maximum allowance equal to seventy per cent of the retirant's average final compensation, the retirant's maximum allowance for the retirant's period of reemployment may not exceed ten per cent of the retirant's average final compensation for the retirant's period of reemployment; and

- (2) If the retirant's maximum retirement allowance upon the retirant's initial retirement was equal to or greater than the applicable limit under section 88-74, the retirant shall not earn service credit or earn any additional retirement allowance during the retirant's period of reemployment, and the reemployed retirant shall not make any contributions under section 88-45.

[(e)] (d) If a retirant's designation of beneficiary was irrevocable upon the retirant's initial retirement, the retirant may not change the retirant's designated beneficiary when the retirant returns to service or when the former retirant again retires.

[(d)] (c) A retirant who returns to service shall not be considered to be "in service,"[5] for the purposes of section 88-75, 88-79, 88-84, or 88-85, or any other provision of this chapter providing for benefits arising out of the disability or death of a member. A retirant who returns to service and dies during the period of reemployment shall be considered to have retired again effective as of the first day of the month following the month in which the death occurs, except for death during the month of December when the effective date of retirement may be the last day of the month.

[(e)] (f) The board shall adopt any rules as may be required to administer this section."

SECTION 4. Section 88-273, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any class C member who terminates service prior to accumulating ten years of credited service, excluding unused sick leave, shall cease to be a member and shall forfeit all credited service; provided that:

- (1) If the former class C member becomes a member again within one [calendar] full year [from the date of termination,] following the calendar year in which the member's employment terminated, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one [calendar] full year [after the date of termination,] following the calendar year in which the member's employment terminated, one month of service credit for previous service shall be restored for each month of service rendered following the return to membership[; and
- (2) If the former class C member becomes a class A, class B, or class H member within one [calendar] full year [from the date of termination,] following the calendar year in which the member's employment terminated, all class C service credit for previous service shall be restored. If the former class C member becomes a class A, class B, or class H member more than one [calendar] full year [after the date of termination,] following the calendar year in which the member's employment terminated, one month of class C service credit for previous service shall be restored for each month of service rendered following the return to membership.

Subject to the provisions of sections 88-322 and 88-324, the service credit restored pursuant to this subsection shall be class C service credit."

SECTION 5. Section 88-284, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following ~~[such]~~ the approval; provided that retirement shall become effective on the first day of the month following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 6. Section 88-322, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Class C members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a), shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying the full actuarial cost of the conversion as of ~~[June 30, 2006,]~~ December 31, 2008, in the manner provided in subsection (d). The option to convert class C credited service to class H credited service shall also apply:

- (1) To forfeited credit for previous service that a member is eligible to have restored as of June 30, 2006; and
- (2) To membership service credit that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006;

provided that the member shall claim the forfeited service credit and the membership service credit by the date established by the board at a meeting held pursuant to chapter 92.

(b) All class A and class B credited service of class A or class B members who make the election to become class H members pursuant to section 88-321(a) shall be converted to class H credited service. The cost of the conversion of class A or class B credited service shall be the member's accumulated contributions as of the date of conversion. Verified membership service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, shall be credited as class H credited service. Class A and class B members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a) shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying, in the manner provided in subsection (d), the full actuarial cost of the conversion as of ~~[the last day of the sixth calendar month preceding the date of the notice described in subsection (e).]~~ December 31, 2008. The option to convert class C credited service to class H credited service shall also apply:

- (1) To forfeited credit for previous service that a member is eligible to have restored as of June 30, 2006; and
- (2) To membership service credit that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006;

provided that the member shall claim the forfeited service credit and the membership service credit by the date established by the board at a meeting held pursuant to chapter 92.”



2. By amending subsection (d) to read:

“(d) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to subsection (a) or (b) to be paid by the member in any one of the following methods at the member’s option:

- (1) By after-tax deductions from the member’s compensation. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or

- (2) By lump sum payment.

~~[If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked.]~~ The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member’s individual account and become part of the member’s accumulated contributions. The deductions from compensation shall commence, and any lump sum payment shall be paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service. If a member is absent from the state while in the military service of the United States during the one hundred eighty-day period after the deadline for making the election, the deductions from the member’s compensation shall commence, and any lump sum payment shall be made by the member, within one hundred eighty days after the member’s return to the member’s regular employment with the State or county; provided that any extension, pursuant to subsection (c), of the deadline for making the election to convert class C credited service to class H credited service shall not extend the time for the deductions from the member’s compensation to commence or for the member to make any lump sum payment unless the extension pursuant to subsection (c) is applicable to all members eligible to make the election. A member’s election to convert class C credited service to class H credited service shall be deemed revoked as to any service for which payments by deductions from compensation do not commence, or for which the lump sum payment is not made, within the time required by this subsection.”

3. By amending subsection (f) to read:

“(f) The actuarial cost of converting a member’s class C credited service to class H credited service under subsections (a) and (b) shall be based on the member’s actual age in full years as of ~~[the last day of the sixth calendar month preceding the date of the notice described in subsection (e).]~~ December 31, 2008, and on the member’s monthly base salary or monthly basic rate of pay as of ~~[the last day of the sixth calendar month preceding the date of the notice described in subsection (e).]~~ December 31, 2008, exclusive of overtime, differentials, supplementary payments, bonuses, and salary supplements, but including elective salary reduction contributions under ~~[sections]~~ Sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.”

SECTION 7. Section 88-334, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following the approval; provided that retirement shall become effective on the first day of the month following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2009; provided that section 6 shall take effect retroactive to February 1, 2009.

(Approved June 15, 2009.)

## ACT 122

H.B. NO. 1351

A Bill for an Act Relating to Private Agricultural Parks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many times, necessary cooperation between and among adjoining and neighboring agriculturalists is stifled by governmental regulation and oversight.

The purpose of this Act is to encourage owners of neighboring agricultural lands to enter into private agreements to reduce the shared costs of generating and transmitting electrical energy, cold water for refrigeration and cooling, and nonpotable water for irrigation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER PRIVATE AGRICULTURAL PARKS

§ -1 **Private agricultural parks.** The owners of one or more contiguous parcels, including public lands, within the agricultural district may establish a private agricultural park. The owners shall register the private agricultural park agreement with the department of agriculture, on forms prescribed and prepared by the department, which shall include the following information for each private agricultural park:

- (1) The names and addresses of all the parties;
- (2) The tax map parcel numbers and number of acres in each parcel to be included in the private agricultural park;
- (3) The types of agricultural activities and products being produced or to be produced by each party, including non-agricultural by-

products that may include renewable sources of energy for the production of electrical energy or liquid fuel and cold water for cooling, processing, and air conditioning purposes; and

- (4) Other information that the department of agriculture determines may be of assistance in promoting the private agricultural park;

provided that, by subsequent filings, a private agricultural park may add or delete parties and parcels from its original filing.

**§ -2 Activities permitted in a private agricultural park.** Within a private agricultural park, pursuant to private agreements between any or all of the parties of the private agricultural park agreement, one or more of the parties may:

- (1) Engage in the generation of electrical energy from fossil fuel or renewable energy sources, including the use of falling water, biomass, wind, and solar energy. Any electrical energy generated within the boundaries of the private agricultural park, whether by a party or parties to the agreement or through an agreement between a party or parties and a nonparty independent energy producer, may be produced, sold, transmitted, and consumed by any other party of the private agricultural park agreement; provided that the electrical energy generated is used for agricultural purposes including but not limited to the pumping of agricultural water, cooling, air conditioning, or agricultural processing; provided further that the electrical energy generated is used within the established boundaries of the private agricultural park; and provided further that the transmission and distribution system is solely owned by a party of the private agricultural park agreement;
- (2) Collect, sell, and distribute cold water to any other party of the private agricultural park agreement to operate cooling and processing facilities for agricultural products or for air conditioning;
- (3) Collect, store, sell, and distribute nonpotable water for irrigation purposes to any other party of the private agricultural park agreement; and
- (4) Engage in any other lawful activity within the boundaries of the private agricultural park for the benefit of one or more of its parties.

**§ -3 Annual report.** (a) Every private agricultural park shall file with the chairperson of the board of agriculture an annual report as prescribed by the chairperson. A copy of the report shall be submitted to the parties of the private agricultural park agreement at an annual meeting or mailed to each party of the private agricultural park agreement.

(b) The annual report shall include an affidavit that electricity generated and distributed within the private agricultural park was used solely for agricultural purposes within the private agricultural park.”

**SECTION 3.** This Act shall take effect upon its approval.

(Approved June 15, 2009.)

A Bill for an Act Relating to Capital Improvement Projects.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that an efficient and fiscally responsible process for the allotment of capital improvement project funds is even more critical during periods of economic instability, such as Hawaii is now experiencing. Capital improvement projects provide needed infrastructure, directly benefiting the residents of the state and contributing to an improved economy through jobs, purchases of goods and services, and other “trickle down” effects of the moneys expended.

The legislature further finds that the allotment process for state capital improvement projects is governed by part II of chapter 37, Hawaii Revised Statutes. Currently, the department of education and the department of budget and finance follow the allotment requirements through a memorandum of understanding to establish procedures to improve the flow of information and operations between the departments governing fiscal operations. Through the memorandum of understanding, both parties are committed to improving transparency, understanding, and knowledge between the departments for fiscal operations.

The purpose of this Act is to direct the legislative reference bureau to review the memorandum of understanding between the department of education and the department of budget and finance for the allotment of capital improvement projects, with the goal of replicating the processes of the memorandum of understanding for use by other state agencies with many capital improvement projects that are predominantly funded by general obligation bonds.

SECTION 2. (a) The legislative reference bureau shall review the memorandum of understanding between the department of education and the department of budget and finance for the allotment of capital improvement projects, with the goal of replicating the processes of the memorandum of understanding for use by other state agencies with many capital improvement projects that are predominantly funded by general obligation bonds, including:

- (1) Concerns or recommendations for changes that either the department of education or the department of budget and finance have regarding the terms of the current memorandum of understanding;
  - (2) Changes that would be required in adapting the memorandum of understanding procedures for use by other state agencies and the department of budget and finance, including statutory amendments; and
  - (3) Recommendations and a proposed timetable for adoption of the processes of the memorandum of understanding for use by other state agencies and the department of budget and finance.
- (b) The review shall include an analysis of pertinent issues, including:
- (1) The terms of understanding, in particular the:
    - (A) Capital improvement projects allotment process;
    - (B) Procedures for deposits of funds;
    - (C) Debt service calculations;
    - (D) Federal funds; and
    - (E) Other fiscal issues;
  - (2) The period of agreement and other terms; and
  - (3) Any other issues that may arise during the review.

(c) The legislative reference bureau shall consult with, at a minimum, the department of budget and finance, the department of education, and other government agencies as deemed appropriate by the legislative reference bureau and legislators.

(d) The legislative reference bureau shall submit a report of its findings, recommendations, and any proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 16, 2009.)

## ACT 124

S.B. NO. 91

A Bill for an Act Relating to Community-Based Economic Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the business community, nonprofit organizations, and other entrepreneurs require a functional, service-oriented agency that is readily available to provide business counseling, financial backing, and general support to foster real community-based economic development for the various products and services demonstrating and embracing Hawaii's diversified economy.

The Hawaii community-based economic development technical and financial assistance program in the department of business, economic development, and tourism was established for this purpose. The legislature established the community-based economic development program in Act 111, Session Laws of Hawaii 1990, codified as chapter 210D, Hawaii Revised Statutes, to provide financial assistance to community-based businesses and enterprises through low-interest loans and grants to qualifying applicants.

The purpose of this Act is to:

- (1) Amend the definition of "community of interest" to better conform the wording to the preceding definition of "community of identity";
- (2) Expand opportunities for the Hawaii community-based economic development revolving fund to access additional funding from other sources and ensure the deposit of other funding into the Hawaii community-based economic development revolving fund;
- (3) Adjust the maximum total outstanding loan balance allowed to reflect current available funding; and
- (4) Reduce the maximum interest rate for loans.

SECTION 2. Section 210D-2, Hawaii Revised Statutes, is amended by amending the definition of "community of interest" to read as follows:

""Community of interest" means a group of people who may not live in the same geographic area but who are bound together through a common economic interest such as coffee growers or an aquaculture cooperative."

SECTION 3. Section 210D-4, Hawaii Revised Statutes, is amended to read as follows:

**"§210D-4 Hawaii community-based economic development revolving fund; established.** There is established a revolving fund to be known as the

Hawaii community-based economic development revolving fund from which moneys shall be loaned[;] or granted by the department under this chapter. All moneys appropriated to the fund by the legislature, received as repayments of loans, payments of interest or fees, [received as royalties,] and all other moneys received by the fund from any other source shall be deposited into the revolving fund and used for the purposes of this chapter. The department may use all appropriations and other moneys in the revolving fund not appropriated for a designated purpose to make grants or loans[; provided that at no time shall the department reallocate funds from the loan program to the grant program so that insufficient funds remain available to make loans]."

SECTION 4. Section 210D-6, Hawaii Revised Statutes, is amended to read as follows:

**"[H§210D-6]] Compensation and expenses of members.** All members shall serve without compensation, but may be reimbursed ~~[from the fund]~~ for any actual and necessary expenses, including travel expenses, incurred in carrying out their official duties."

SECTION 5. Section 210D-8, Hawaii Revised Statutes, is amended to read as follows:

**"§210D-8 Powers and duties.** The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) With advice from the council, prescribe the qualifications for eligibility of applicants for loans and grants;
- (2) With advice from the council, establish preferences and priorities in determining eligibility for financial assistance;
- (3) Establish the conditions, consistent with the purpose of this chapter, for the awarding of financial assistance;
- (4) Provide for inspection at reasonable hours of facilities, books, and records of a community-based organization ~~[which]~~ that has applied for or has been awarded financial assistance and require the submission of progress and final reports;
- (5) Provide loans[;] and grants for community-based economic development activities and community-based enterprises for purposes consistent with this chapter;
- (6) Determine the necessity for and the extent of security required in a loan;
- (7) Prescribe and provide appropriate management counseling and monitoring of business activities;
- (8) Administer the Hawaii community-based economic development revolving fund;
- (9) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
- (10) Participate in loans made to qualified persons by private lenders;
- (11) Establish interest rates chargeable by the State for direct and participation loans; and
- (12) Adopt rules pursuant to chapter 91 to implement this chapter."

SECTION 6. Section 210D-9, Hawaii Revised Statutes, is amended to read as follows:

**“§210D-9 Loans; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in paragraphs (1) and (2) and shall be made only to applicants who meet the eligibility requirements specified therein.

- (1) Community-based enterprise establishment and improvement loans may be made to provide for:
  - (A) The start-up costs, purchase or improvement of a community-based enterprise or working capital; and
  - (B) The purchase, construction, or improvement of facilities; and
- (2) Operating loans may be made to carry on and improve an existing enterprise, including:
  - (A) The purchase of equipment; and
  - (B) The payment of production and marketing expenses including materials, labor, and services.

The loans shall be for an amount not to exceed ~~[\$500,000]~~ \$250,000 and for a term not to exceed ten years.”

SECTION 7. Section 210D-10, Hawaii Revised Statutes, is amended to read as follows:

**“§210D-10 Terms of loans.** Loans shall be made to qualified applicants with the following terms and conditions:

- (1) The amount of the outstanding balance on all loans issued under this chapter to any one applicant at any one time shall not exceed ~~[\$500,000;]~~ \$250,000;
- (2) The maximum term of a loan shall not exceed ten years;
- (3) Each loan shall bear simple interest at a rate of not less than three and not more than ~~[ten]~~ six per cent a year, depending on the nature of the loan; and
- (4) The commencement date for the repayment of the first installment on principal and interest of each loan may be deferred by the director of business, economic development, and tourism for a period not to exceed two years.”

SECTION 8. Section 210D-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**“(b)** To receive a grant ~~[hereunder]~~ under this section for community-based economic development activities or development of a community-based enterprise, an applicant shall:

- (1) Be either:
  - (A) A profit subsidiary of a nonprofit community-based organization incorporated under the laws of the State; ~~[or]~~
  - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service; or
  - (C) A cooperative association~~[-]~~;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies ~~[which]~~ that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree unless specifically permitted by the department;

- (3) Agree to make available to the department all records the applicant may have relating to the operation of the community-based enterprise, to allow state agencies to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2009.

(Approved June 16, 2009.)

## ACT 125

S.B. NO. 1259

A Bill for an Act Relating to Environmental Response.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to promote the cleanup and reuse of contaminated properties by providing relief for bona fide prospective purchasers and innocent contiguous property owners from liability under chapter 128D, Hawaii Revised Statutes. This Act amends chapter 128D, Hawaii Revised Statutes, to establish consistency between state and federal laws after the passage of the federal Small Business Liability Relief and Brownfields Revitalization Act, P.L. 107-118 (42 U.S.C. Sections 9601-9628).

SECTION 2. Section 128D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Bona fide prospective purchaser" means a person (or a tenant of a person) who acquires ownership of a facility after October 1, 2009, and establishes each of the following by a preponderance of the evidence:

- (1) All disposal of hazardous substances at the facility occurred before the person acquired the facility;
- (2) The person carried out all appropriate inquiries when, on or before the date on which the person acquired the facility:
  - (A) The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with subparagraphs (B) and (C);
  - (B) The standards and practices referred to in 42 United States Code Section 9601(35)(B)(ii) and (iv) and 40 Code of Federal Regulations part 312 are used unless the director requires otherwise by rules adopted pursuant to chapter 91; and
  - (C) In the case of property in residential use or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this paragraph;
- (3) The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility;



- (4) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to:
  - (A) Stop any continuing release;
  - (B) Prevent any threatened future release; and
  - (C) Prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
- (5) The person provides full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility);
- (6) The person:
  - (A) Is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and
  - (B) Does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action;
- (7) The person complies with any request for information or administrative subpoena issued by the President of the United States under 42 United States Code chapter 103, by the director under chapter 128D, or issued by any state or federal court; and
- (8) The person is not:
  - (A) Potentially liable, or affiliated with any other person who is potentially liable, for response costs at a facility through:
    - (i) Any direct or indirect familial relationship; or
    - (ii) Any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or
  - (B) The result of a reorganization of a business entity that was potentially liable.”

SECTION 3. Section 128D-6, Hawaii Revised Statutes, is amended to read as follows:

**“§128D-6 Liability.** (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (c):

- (1) The owner or operator or both of a facility or vessel;
- (2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;
- (3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or on any vessel owned or operated by another party or entity and containing such hazardous substances; and
- (4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release, which causes the incurrence of response costs of a hazardous substance;

shall be strictly liable for (A) all costs of removal or remedial actions incurred by the State or any other person; to the extent such costs and actions are consistent with this chapter, the state contingency plan, and any other state rules; (B) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release; and (C) the costs of any health assessment or health effects study carried out consistent with this chapter, the state contingency plan, or any other state rules.

(b) The amounts recoverable in an action under this section shall include interest on the amounts recoverable under ~~[subparagraphs (A) through (C)]~~ section 128D-6(a)(A) through (C). Such interest shall accrue from the later of (1) the date payment of a specified amount is demanded in writing, or (2) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the State's fund.

(c) There shall be no liability under subsection (a) for a defendant otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

- (1) Any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight;
- (2) An act of war;
- (3) An act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
- (4) Any combination of the foregoing paragraphs.

(d) A defendant may also avoid liability under subsection (a) where the defendant is able to establish that the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility. In addition to establishing the foregoing, the defendant ~~[must]~~ shall establish that the defendant has satisfied the requirements of section 128D-6(c)(3) and one or more of the following circumstances described in paragraphs (1), (2), ~~[(3), (4), or (5)]~~ is also established by the defendant by a preponderance of the evidence:

- (1) At the time the defendant acquired the facility, the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed on, in, or at the facility;
- (2) The defendant is a government entity ~~[which]~~ that acquired the facility by escheat, ~~[(or)]~~ through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; ~~[(or)]~~
- (3) The defendant acquired the facility by inheritance or bequest~~[-]~~;

- (4) At the time the defendant acquired the facility, the defendant met the definition of “bona fide prospective purchaser”; or
- (5) The defendant was a contiguous property owner, as described in subsection (k).

To establish that the defendant had no reason to know, as provided in paragraph (1), the defendant ~~[must]~~ shall have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence, the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

Nothing in this subsection or in section 128D-6(c)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this definition, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, the defendant shall be treated as liable under section 128D-6(a)(1) and no defense under section 128D-6(c)(3) shall be available to the defendant.

Nothing in this subsection shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(e) No person shall be liable under this chapter or otherwise under the laws of the State or any of the counties, including the common law, to any government or private parties for costs, damages, or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in compliance with this chapter, the National Contingency Plan, or at the direction of a federal or state on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or pollutant or contaminant or the threat thereof. This subsection shall not preclude liability for costs, damages, or penalties as the result of gross negligence or intentional misconduct on the part of such person.

(f) No county or local government shall be liable under this chapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance or pollutant or contaminant generated by or from a facility owned by another person. This subsection shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the county or local government.

(g) No indemnification, hold harmless, or similar agreement or conveyances shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(h) In the case of an injury to, destruction of, or loss of natural resources under section 128D-6(a)(4)(B), liability shall be solely to the State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to the State. The natural resource trustee for the State shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the natural resource trustee under section 128D-6(a)(4) (B) shall not be limited by the sums which can be used to restore or replace such resources. Any damages recovered by the state attorney general for damages to natural resources shall be deposited in the fund and credited to a special account for the purposes provided above.

(i) Provided that no liability shall be imposed under this chapter, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable ~~environment~~ environmental analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resources. Notwithstanding any other provision of this chapter, there shall be no recovery under this chapter for natural resource damages where such damages have occurred wholly before July 1, 1990.

(j) No person other than a government entity may recover costs or damages under this chapter arising from a release which occurred before July 1, 1990.

(k) Contiguous properties shall be treated as stated in this subsection, except as specifically noted:

(1) A person shall not be considered to be an owner or operator under the following conditions:

(A) In general, a person who owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under section 128D-6(a) solely by reason of the contamination if:

- (i) The person did not cause, contribute to, or consent to the release or threatened release;
- (ii) The person is not potentially liable, or affiliated with any other person who is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or the result of a reorganization of a business entity that was potentially liable;
- (iii) The person takes reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;
- (iv) The person provides full cooperation, assistance, and access to persons who are authorized to conduct response

- actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility):
- (v) The person is in compliance with any land use restrictions established or relied on in connection with the response action at the facility, and the person does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;
  - (vi) The person complies with any request for information or administrative subpoena issued by the President of the United States under 42 United States Code chapter 103, by the director under chapter 128D, or issued by any state or federal court;
  - (vii) The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and
  - (viii) At the time at which the person acquired the property, the person conducted all appropriate inquiry within the meaning of 42 United States Code Section 9601(35)(B) with respect to the property, and the person did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person;
- (B) To qualify as a person described in subparagraph (A), a person shall establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met;
- (C) Any person who does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser as defined under section 128D-1, if the person is otherwise described in that section;
- (D) With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except as the director may deem necessary or in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995;
- (2) With respect to a person described in this subsection, nothing in this subsection:
- (A) Limits any defense to liability that may be available to the person under any other provision of law; or
  - (B) Imposes liability on the person that is not otherwise imposed by section 128D-6(a);
- (3) The director may:

- (A) Issue an assurance that no enforcement action under chapter 128D shall be initiated against a person described in paragraph (1); and
- (B) Grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 128D-5."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 2009.)

## ACT 126

S.B. NO. 1008

A Bill for an Act Relating to Water Quality Standards.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to revise certain state water quality standards for inland and marine waters on an interim basis to conform to levels recommended by the State and the United States Environmental Protection Agency, until the state department of health proposes, and the United States Environmental Protection Agency approves, standards for the pollutants and indicator organism identified in this Act, pursuant to the review of state water quality standards mandated under Section 303(c) of the Federal Water Pollution Control Act of 1972, as amended. The legislature finds that these revisions are important to the economic and social development of the State and that these revised standards are adequate to fully protect the designated and existing uses of the State's inland and marine waters.

SECTION 2. (a) In accordance with Section 303(c) of the Federal Water Pollution Control Act of 1972, as amended, the water quality criteria in the 2006 United States Environmental Protection Agency National Recommended Water Quality Criteria, including the applicable footnotes and appendices, for all Priority Toxic Pollutants and Non-Priority Pollutants for the protection of aquatic life in surface water (acute and chronic effects in fresh water and salt water), and for the protection of human health for consumption (organism only), are hereby adopted by the State as water quality standards and apply to all state inland and marine waters, except for:

- (1) The 2006 National Recommended Water Quality Criteria for arsenic, cadmium, chromium, chromium III, chromium VI, copper, lead, mercury, nickel, selenium, silver, and zinc; and
- (2) The 2006 National Recommended Water Quality Criteria for non-priority pollutants not currently listed in chapter 11-54, Hawaii Administrative Rules.

(b) When there is no nationally recommended criterion promulgated for a Priority or Non-Priority Pollutant, relevant provisions in chapter 11-54, Hawaii Administrative Rules, relating to that pollutant shall not be repealed by virtue of, or deemed as being inconsistent with, this Act and shall remain in effect.

(c) The following table of numeric standards for toxic pollutants applicable to all waters fully incorporates the water quality standards adopted by the State pursuant to subsections (a) and (b) and the relevant provisions

of chapter 11-54, Hawaii Administrative Rules, that are not repealed or not deemed inconsistent with this Act and shall remain in effect. The freshwater standards shall apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand and the saltwater standards shall apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

Numerical Standards for Toxic Pollutants Applicable to All Waters (A)	EPA Priority Pollutant No. and Name <sup>1</sup>	carcinogen	CAS Number	Freshwater		Saltwater		Human Health for the consumption of Organism Only	FR Cite/ Source
				CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)		
1	Antimony		7440360	3000	ns	ns	ns	640 B	65FR66443
2	Arsenic		7440382	360	190	69	36	ns	
3	Beryllium	X	7440417	43	ns	ns	ns	0.038	
4	Cadmium		7440439	3*	3*	43	9.3	ns	
5b	Chromium (VI)		18540299	16	11	1100	50	ns	
6	Copper			6*	6*	2.9	2.9	ns	
7	Lead		7439921	29*	29*	140	5.6	ns	
8a	Mercury		7439976	2.4	0.55	2.1	0.025	0.047	
8b	Methylmercury		22967926	1.4 D,K,hh	0.77 D,K,hh	1.8 D,ee,hh	0.94 D,ee,hh	0.3 mg/kg J	EPA823-R-01-001
9	Nickel			5*	5*	75	8.3	33	
10	Selenium		7782492	20	5	300	71	ns	
11	Silver		7440224	1*	1*	2.3	ns	ns	
12	Thallium		7440280	470	ns	710	ns	0.47	68FR75510
13	Zinc		7440666	22*	22*	95	86	ns	
14	Cyanide		57125	22 K,Q	5.2 K,Q	1 Q,bb	1 Q,bb	140 jj	68FR75510 57FR60848 EPA820/B-96-001
15	Asbestos		1332214	ns	ns	ns	ns	ns	57FR60848
16	2,3,7,8-TCDD (Dioxin)	X	1746016	0.003	ns	ns	ns	5.1E-9 C	65FR66443
17	Acrolein		107028	23	ns	18	ns	290	65FR66443
18	Acrylonitrile	X	107131	2500	ns	ns	ns	0.25 B,C	65FR66443
19	Benzene	X	71432	1800	ns	1700	ns	51 B,C	IRIS 01/19/00 &65FR66443
20	Bromoform		75252	ns	ns	ns	ns	140 B,C	65FR66443
21	Carbon Tetrachloride	X	56235	12000	ns	16000	ns	1.6 B,C	65FR66443
22	Chlorobenzene		108907	ns	ns	ns	ns	1,600 U	68FR75510
23	Chlorodibromomethane		124481	ns	ns	ns	ns	13 B,C	65FR66443
24	Chloroethane		75003	ns	ns	ns	ns	ns	
25	2-Chloroethylvinyl Ether		110758	ns	ns	ns	ns	ns	
26	Chloroform	X	67663	9600	ns	ns	ns	470 C,P	62FR42160
27	Dichlorobromomethane		75274	ns	ns	ns	ns	17 B,C	65FR66443
28	1,1-Dichloroethane		75343	ns	ns	ns	ns	ns	

<sup>1</sup> Office of Science and Technology. 2006. National Recommended Water Quality Criteria. U.S. Environmental Protection Agency, Office of Water (43041).

Numerical Standards for Toxic Pollutants Applicable to All Waters (A)			carcinogen	CAS Number	Freshwater		Saltwater		Human Health for the consumption of	FR Cite/ Source
EPA Priority Pollutant No. and Name <sup>1</sup>					CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)	Organism Only	
29	1,2-Dichloroethane	X	107062	39000	ns	38000	ns	37 B,C	65FR66443	
30	1,1-Dichloroethylene		75354	ns	ns	ns	ns	7,100	68FR75510	
31	1,2-Dichloropropane		78875	ns	ns	ns	ns	15 B,C	65FR66443	
32	1,3-Dichloropropene		542756	2000	ns	260	ns	21 C	68FR75510	
33	Ethylbenzene		100414	11000	ns	140	ns	2,100	68FR75510	
34	Methyl Bromide		74839	ns	ns	ns	ns	1,500 B	65FR66443	
35	Methyl Chloride		74873	ns	ns	ns	ns	ns	65FR31682	
36	Methylene Chloride		75092	ns	ns	ns	ns	590 B,C	65FR66443	
37	1,1,2,2-Tetrachloroethane	X	79345	ns	ns	3000	ns	4.0 B,C	65FR66443	
38	Tetrachloroethylene	X	127184	1800	ns	3400	145	3.3 C	65FR66443	
39	Toluene		108883	5800	ns	2100	ns	15,000	68FR75510	
40	1,2-Trans-Dichloroethylene		156605	ns	ns	ns	ns	10,000	68FR75510	
41	1,1,1-Trichloroethane		71556	6000	ns	10400	ns	340,000	65FR31682	
42	1,1,2-Trichloroethane	X	79005	6000	ns	ns	ns	16 B,C	65FR66443	
43	Trichloroethylene	X	79016	15000	ns	700	ns	30 C	65FR66443	
44	Vinyl Chloride	X	75014	ns	ns	ns	ns	2.4 C,kk	68FR75510	
45	2-Chlorophenol		95578	1400	ns	ns	ns	150 B,U	65FR66443	
46	2,4-Dichlorophenol		120832	670	ns	ns	ns	290 B,U	65FR66443	
47	2,4-Dimethylphenol		105679	700	ns	ns	ns	850 B,U	65FR66443	
48	2-Methyl-4,6-Dinitrophenol		534521	ns	ns	ns	ns	280	65FR66443	
49	2,4-Dinitrophenol		51285	ns	ns	ns	ns	5,300 B	65FR66443	
50	2-Nitrophenol		88755	ns	ns	ns	ns	ns		
51	4-Nitrophenol		100027	ns	ns	ns	ns	ns		
52	3-Methyl-4-Chlorophenol		59507	ns	ns	ns	ns	U		
53	Pentachlorophenol		87865	19 F,K	15 F,K	13 bb	7.9 bb	3.0 B,C,H	65FR66443 65FR31682	
54	Phenol		108952	3400	ns	170	ns	1,700,000 B,U	65FR66443	
55	2,4,6-Trichlorophenol	X	88062	ns	ns	ns	ns	2.4 B,C,U	65FR66443	
56	Acenaphthene		83329	570	ns	320	ns	990 B,U	65FR66443	
57	Acenaphthylene		208968	ns	ns	ns	ns	ns		
58	Anthracene		120127	ns	ns	ns	ns	40,000 B	65FR66443	
59	Benzidine	X	92875	800	ns	ns	ns	0.00020 B,C	65FR66443	
60	Benzo(a) Anthracene		56553	ns	ns	ns	ns	0.018 B,C	65FR66443	
61	Benzo(a) Pyrene		50328	ns	ns	ns	ns	0.018 B,C	65FR66443	
62	Benzo(b) Fluoranthene		205992	ns	ns	ns	ns	0.018 B,C	65FR66443	
63	Benzo(ghi) Perylene		191242	ns	ns	ns	ns	ns		



Numerical Standards for Toxic Pollutants Applicable to All Waters (A)		carcinogen	Freshwater		Saltwater		Human Health for the consumption of	FR Cite/ Source
EPA Priority Pollutant No. and Name <sup>1</sup>			CAS Number	CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)	
64 Benzo(k) Fluoranthene			207089	ns	ns	ns	ns	0.018 B,C
65 Bis(2-Chloroethoxy) Methane			111911	ns	ns	ns	ns	ns
66 Bis(2-Chloroethyl) Ether	X		111444	ns	ns	ns	ns	0.53 B,C
67 Bis(2-Chloroisopropyl) Ether			108601	ns	ns	ns	ns	65,000 B
68 Bis(2-Ethylhexyl) PhthalateX			117817	ns	ns	ns	ns	2.2 B,C
69 4-Bromophenyl Phenyl Ether			101553	ns	ns	ns	ns	ns
70 Butylbenzyl PhthalateW			85687	ns	ns	ns	ns	1,900 B
71 2-Chloronaphthalene			91587	ns	ns	ns	ns	1,600 B
72 4-Chlorophenyl Phenyl Ether			7005723	ns	ns	ns	ns	ns
73 Chrysene			218019	ns	ns	ns	ns	0.018 B,C
74 Dibenzo(a,h)Anthracene			53703	ns	ns	ns	ns	0.018 B,C
75 1,2-Dichlorobenzene			95501	ns	ns	ns	ns	1,300
76 1,3-Dichlorobenzene			541731	ns	ns	ns	ns	960
77 1,4-Dichlorobenzene			106467	ns	ns	ns	ns	190
78 3,3'-Dichlorobenzidine	X		91941	ns	ns	ns	ns	0.028 B,C
79 Diethyl PhthalateW			84662	ns	ns	ns	ns	44,000 B
80 Dimethyl PhthalateW			131113	ns	ns	ns	ns	1,100,000
81 Di-n-Butyl PhthalateW			84742	ns	ns	ns	ns	4,500 B
82 2,4-Dinitrotoluene			121142	ns	ns	ns	ns	3.4 C
83 2,6-Dinitrotoluene			606202	ns	ns	ns	ns	ns
84 Di-n-Octyl Phthalate			117840	ns	ns	ns	ns	ns
85 1,2-Diphenylhydrazine			122667	ns	ns	ns	ns	0.20 B,C
86 Fluoranthene			206440	1300	ns	13	ns	140 B
87 Fluorene			86737	ns	ns	ns	ns	5,300 B
88 Hexachlorobenzene	X		118741	ns	ns	ns	ns	0.00029 B,C
89 Hexachlorobutadiene	X		87683	30	ns	11	ns	18 B,C
90 Hexachlorocyclopentadiene			77474	2	ns	2	ns	1,100 U
91 Hexachloroethane	X		67721	330	ns	310	ns	3.3 B,C
92 Ideno(1,2,3-cd)Pyrene			193395	ns	ns	ns	ns	0.018 B,C
93 Isophorone			78591	39000	ns	4300	ns	960 B,C
94 Naphthalene			91203	770	ns	780	ns	ns
95 Nitrobenzene			98953	9000	ns	2200	ns	690 B,H,U
96 N-Nitrosodimethylamine	X		62759	ns	ns	ns	ns	3.0 B,C
97 N-Nitrosodi-n-Propylamine			621647	ns	ns	ns	ns	0.51 B,C
98 N-Nitrosodiphenylamine	X		86306	ns	ns	ns	ns	6.0 B,C

Numerical Standards for Toxic Pollutants Applicable to All Waters (A)		carcinogen	CAS Number	Freshwater		Saltwater		Human Health for the consumption of	FR Cite/ Source
EPA Priority Pollutant No. and Name <sup>1</sup>				CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)	Organism Only	
99	Phenanthrene		85018	ns	ns	ns	ns	ns	
100	Pyrene		129000	ns	ns	ns	ns	4,000 B	65FR66443
101	1,2,4-Trichlorobenzene		120821	ns	ns	ns	ns	70	68FR75510
102	Aldrin	X	309002	3.0 G	ns	1.3 G	ns	0.000050 B,C	65FR66443 65FR31682
103	alpha-BHC	X	319846	ns	ns	ns	ns	0.0049 B,C	65FR66443
104	beta-BHC	X	319857	ns	ns	ns	ns	0.017 B,C	65FR66443
105	gamma-BHC (Lindane)	X	58899	0.95 K	0.08	0.16 G	ns	1.8	65FR31682 68FR75510
106	delta-BHC		319868	ns	ns	ns	ns	ns	
107	Chlordane	X	57749	2.4 G	0.0043 G,aa	0.09 G	0.004 G,aa	0.00081 B,C	65FR66443 65FR31682
108	4,4'-DDT	X	50293	1.1 G,ii	0.001 G,aa,ii	0.13 G,ii	0.001 G,aa,ii	0.00022 B,C	65FR66443 65FR31682
109	4,4'-DDE		72559	ns	ns	ns	ns	0.00022 B,C	65FR66443
110	4,4'-DDD		72548	ns	ns	ns	ns	0.00031 B,C	65FR66443
111	Dieldrin	X	60571	0.24 K	0.056 K,O	0.71 G	0.0019 G,aa	0.000054 B,C	65FR66443 65FR31682
112	alpha-Endosulfan		959988	0.22 G,Y	0.056 G,Y	0.034 G,Y	0.0087 G,Y	89 B	65FR66443 65FR31682
113	beta-Endosulfan		33213659	0.22 G,Y	0.056 G,Y	0.034 G,Y	0.0087 G,Y	89 B	65FR66443 65FR31682
114	Endosulfan Sulfate		1031078	ns	ns	ns	ns	89 B	65FR66443
115	Endrin		72208	0.086 K	0.036 K,O	0.037 G	0.0023 G,aa	0.06	65FR31682 68FR75510
116	Endrin Aldehyde		7421934	ns	ns	ns	ns	0.30 B,H	65FR66443
117	Heptachlor	X	76448	0.52 G	0.0038 G,aa	0.053 G	0.0036 G,aa	0.000079 B,C	65FR66443 65FR31682
118	Heptachlor Epoxide		1024573	0.52 G,V	0.0038 G,V,aa	0.053 G,V	0.0036 G,V,aa	0.000039 B,C	65FR66443 65FR31682
119	Polychlorinated Biphenyls (PCBs)	X	-	2.0	0.014	10	0.03 N,aa	0.000064 B,C,N	65FR66443 65FR31682
120	Toxaphene	X	8001352	0.73	0.0002 aa	0.21	0.0002 aa	0.00028 B,C	65FR66443 65FR31682

## FOOTNOTES

### Numerical Standards for Toxic Pollutants Applicable to All Waters (A)

\* The Value listed is the minimum standard. Depending upon the receiving water CaCO<sub>3</sub> hardness, higher standards may be calculated using the respective formula in the USEPA publication Quality Criteria for Water (EPA 44/5-86-001, Revised May 1, 1987)

B This criterion has been revised to reflect The Environmental Protection Agency's q1\* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

C This criterion is based on carcinogenicity of 10<sup>-6</sup> risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10<sup>-5</sup>, move the decimal point in the recommended criterion one place to the right).

D Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term "Conversion Factor" (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors

for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs). See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria" October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource Center and 40CFR§131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble- Conversion Factors for Dissolved Metals.

F Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows:  $CMC = \exp(1.005(pH)-4.869)$ ;  $CCC = \exp(1.005(pH)-5.134)$ . Values displayed in table correspond to a pH of 7.8.

G This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (EPA 440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

H No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 *Quality Criteria for Water*. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

J This fish tissue residue criterion for methylmercury is based on a total fish consumption rate of 0.0175 kg/day.

K This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, (EPA-820-B-96-001, September 1996). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

N This criterion applies to total pcbs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)

O The derivation of the CCC for this pollutant (Endrin) did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

P Although a new RfD is available in IRIS, the surface water criteria will not be revised until the National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) is completed, since public comment on the relative source contribution (RSC) for chloroform is anticipated.

Q This recommended water quality criterion is expressed as g free cyanide (as CN)/L.

U The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

Y This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

aa This criterion is based on a 304(a) aquatic life criterion issued in 1980 or 1986, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endrin (EPA 440/5-80-047), Heptachlor (EPA 440/5-80-052), Polychlorinated biphenyls (EPA 440/5-80-068), Toxaphene (EPA 440/5-86-006). This CCC is currently based on the Final Residue Value (FRV) procedure. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria. Therefore, the Agency anticipates that future revisions of this CCC will not be based on the FRV procedure.

bb This water quality criterion is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5-84-033), Cadmium (EPA-822-R-01-001), Chromium (EPA 440/5-84-029), Copper (EPA 440/5-84-031), Cyanide (EPA 440/5-84-028), Lead (EPA 440/5-84-027), Nickel (EPA 440/5-86-004), Pentachlorophenol (EPA 440/5-86-009), Toxaphene, (EPA 440/5-86-006), Zinc (EPA 440/5-87-003).

ee This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5-84-026, January 1985). The saltwater CCC of 0.025 ug/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

hh This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.

jj This recommended water quality criterion is expressed as total cyanide, even though the IRIS RFD we used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no 'bioavailability' to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g.,  $\text{Fe}_4[\text{Fe}(\text{CN})_6]_3$ ), this criterion may be over conservative.

Numerical Standards for Toxic Pollutants Applicable to All Waters (B)		CAS Number	Freshwater		Saltwater		Human Health for the consumption of Organism Only	FR Cite/ Source
EPA Non-Priority Pollutant No. and Name <sup>2</sup>	carcinogen		CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)		
2 Aluminum pH 6.5 - 9.0		7429905	750 G,I	87 G,I,L	ns	ns	ns	53FR33178
9 Chlorine		7782505	19	11	13	7.5	ns	Gold Book
12 Chlorpyrifos		2921882	0.083 G	0.041 G	0.011 G	0.0056 G	ns	Gold Book
14 Demeton		8065483	ns	0.1 F	ns	0.1 F	ns	Gold Book
15 Ether, Bis(Chloromethyl)	X	542881	ns	ns	ns	ns	0.00029 E,H	65FR66443
17 Guthion		86500	ns	0.01 F	ns	0.01 F	ns	Gold Book
19 Hexachlorocyclo-hexane-Technical	X	608731	ns	ns		ns	0.0414	Gold Book
21 Malathion		121755	ns	0.1 F	ns	0.1 F	ns	Gold Book
23 Methoxychlor		72435	ns	0.03 F	ns	0.03 F	ns	Gold Book
24 Mirex		2385855	ns	0.001 F	ns	0.001 F	ns	Gold Book
26 Nitrosamines	X	—	1950	ns	ns	ns	1.24	Gold Book
29 Nitrosodibutylamine, N	X	924163	ns	ns	ns	ns	0.22 A,H	65FR66443
30 Nitrosodiethylamine, N	X	55185	ns	ns	ns	ns	1.24 A,H	Gold Book
31 Nitrosopyrrolidine, N	X	930552	ns	ns	ns	ns	34 H	65FR66443
35 Parathion		56382	0.065 J	0.013 J	ns	ns	ns	Gold Book
36 Pentachlorobenzene		608935	ns	ns	ns	ns	1.5 E	65FR66443
45 Tetrachlorobenzene, 1,2,4,5		95943	ns	ns	ns	ns	1.1 E	65FR66443
46 Tributyltin (TBT)		—	0.46 Q	0.072 Q	0.42 Q	0.0074 Q	ns	69FR342

<sup>2</sup> Office of Science and Technology. 2006. National Recommended Water Quality Criteria. U.S. Environmental Protection Agency, Office of Water (4304T).

## FOOTNOTES

### Numerical Standards for Toxic Pollutants Applicable to All Waters (B)

A This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book.

E This criterion has been revised to reflect EPA's  $q1^*$  or  $RfD$ , as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

F The derivation of this value is presented in the Red Book (EPA 440/9-76-023, July, 1976).

G This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in one of the following criteria documents: Aluminum (EPA 440/5-86-008); Chloride (EPA 440/5-88-001); Chloropyrifos (EPA 440/5-86-005).

H This criterion is based on carcinogenicity of  $10^{-6}$  risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of  $10^{-5}$ , move the decimal point in the recommended criterion one place to the right).

I This value for aluminum is expressed in terms of total recoverable metal in the water column.

J This value is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: *Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA-820-B-96-001). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

L There are three major reasons why the use of Water-Effect Ratios might be appropriate.

1. The value of 87  $\mu\text{g/L}$  is based on a toxicity test with the striped bass in water with  $\text{pH} = 6.5\text{--}6.6$  and hardness  $<10 \text{ mg/L}$ . Data in "Aluminum Water-Effect Ratio for the 3M Plant Effluent Discharge, Middleway, West Virginia" (May 1994) indicate that aluminum is substantially less toxic at higher pH and hardness, but the effects of pH and hardness are not well quantified at this time.
2. In tests with the brook trout at low pH and hardness, effects increased with increasing concentrations of total aluminum even though the concentration of dissolved aluminum was constant, indicating that total recoverable is a more appropriate measurement than dissolved, at least when particulate aluminum is primarily aluminum hydroxide particles. In surface waters, however, the total recoverable procedure might measure aluminum associated with clay particles, which might be less toxic than aluminum associated with aluminum hydroxide.
3. EPA is aware of field data indicating that many high quality waters in the U.S. contain more than 87 g aluminum/L, when either total recoverable or dissolved is measured.

Q EPA announced the availability of a draft updated tributyltin (TBT) document on August 7, 1997 (62FR42554). The Agency has reevaluated this document and anticipates releasing an updated document for public comment in the near future.

Numerical Standards for Toxic Pollutants Applicable to All Waters (C)		carcinogen		Freshwater		Saltwater		Human Health for the consumption of	
Pollutant Name			CAS Number	CMC 1 (acute)	CCC 1 (chronic)	CMC 1 (acute)	CCC 1 (chronic)	Organism Only	FR Cite/ Source
	DDT - metabolite TDE	X		0.03	ns	1.2	ns	ns	
	Dichlorobenzenes	X		370	ns	660	ns	850	
	Dichloropropanes			7700	ns	3400	ns	ns	
	Dinitrotoluenes	X		110	ns	200	ns	3	
	Endosulfan			0.22	0.056	0.034	0.0087	52	
	Nitrophenols	X		77	ns	1600	ns	ns	
	Pentachloroethanes			2400	ns	130	ns	ns	
	Polynuclear aromatic hydrocarbons	X		ns	ns	ns	ns	0.01	
	Tetrachloroethanes			3100	ns	ns	ns	ns	
	Tetrachlorophenol(2,3,5,6)		58902	ns	ns	ns	440	ns	

Note – Compounds listed in the plural in the Pollutant column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

SECTION 3. (a) In accordance with 40 Code of Federal Regulations, Section 131.41, the State designates as coastal recreation waters all waters up to three miles from shore to a depth of thirty-three meters, excluding areas where water contact recreational activities are prohibited by state or federal law or regulation.

(b) In coastal recreation waters within five hundred meters from the shoreline, enterococcus content shall not exceed a geometric mean of thirty-five colony forming units per one hundred milliliters in no fewer than five samples, which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of one hundred and four colony forming units per one hundred milliliters or the site-specific one-sided seventy-five per cent confidence limit.

(c) Coastal recreation waters between five hundred meters and three miles from shore shall be designated as infrequent use coastal recreation waters, and enterococcus content in these waters shall not exceed a geometric mean of thirty-five colony forming units per one hundred milliliters in no fewer than five samples, which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of five hundred and one colony forming units per one hundred milliliters or the site-specific one-sided ninety-five per cent confidence limit.

(d) At locations where samples are taken less frequently than five samples for each twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the twenty-five to thirty-day period exceed thirty-five colony forming units per one hundred milliliters.

SECTION 4. Except as provided in section 2(b) of this Act, to the extent any provision in chapter 11-54, Hawaii Administrative Rules, is inconsistent with this Act, that provision shall be superseded upon approval by the United States Environmental Protection Agency of a corresponding provision or standard. Water quality standards not inconsistent with this Act shall remain in effect.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect upon approval; provided that:

- (1) The specific water quality standards prescribed in this Act shall take effect upon their approval by the United States Environmental Protection Agency;
- (2) Any water quality standard adopted in section 2 or section 3 of this Act shall be repealed upon a same or corresponding standard being adopted, amended, or repealed by rules adopted under chapter 91, Hawaii Revised Statutes, by the department of health, and the rule being approved by the United States Environmental Protection Agency; provided further that the remaining standards specified in this Act shall remain in effect; and
- (3) This Act shall be repealed on June 30, 2011.

(Approved June 16, 2009.)

## ACT 127

S.B. NO. 937

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 100, Session Laws of Hawaii 2008, enacted several statutory changes “to minimize the census at Hawaii State Hospital and promote community based health services for forensic patients” largely based on recommendations stemming from the task force established through Senate Concurrent Resolution No. 117, S.D. 1, H.D. 1, in 2006. The task force focused on the provisions of chapter 704, Hawaii Revised Statutes, which govern penal responsibility and fitness to proceed and provide an affirmative defense in criminal cases for defendants who do not meet the test for penal responsibility on account of physical or mental disease, disorder, or defect.

The statutes in chapter 704 authorize the courts to commit defendants to a hospital or to the custody of the director of health at several stages of the criminal process related to the affirmative defense. These provisions govern the large majority of admissions to, and discharges from, the Hawaii state hospital. The time elapsed in cases involving hospital services during chapter 704 processes and procedures directly affects the rate of hospital admissions and discharges and, therefore, directly affects the Hawaii state hospital census.

During its consideration of the actual time involved in the application of chapter 704 procedures, the task force received information about the long time frames usually involved in each stage of the procedures, and many of the task force’s recommendations were aimed at shortening those time frames. Senate Bill No. 2396, H.D. 1, considered during the regular session of 2008, set forth the task force’s proposed statutory amendments, including an initial provision requiring judicial review of commitments resulting from felony charges and all conditional releases on an annual basis for the first five years, and in biennial intervals thereafter.

As the bill continued through the legislative process, this proposed judicial call back provision drew concern. The bill was enacted as Act 100, Session Laws of Hawaii 2008, and added the call back provision to section 704-411, Hawaii Revised Statutes as subsections (5), (6), and (7). The enactment of these call back provisions appears to have resulted, inadvertently, in a two-tiered procedure for conditional release or discharge from the custody of the director of health, or at least, raised confusion about the interplay between the new call back subsections and the conditional release and discharge processes set forth in section 704-412, Hawaii Revised Statutes.

The purpose of this Act is to clarify that the provisions of section 704-412, Hawaii Revised Statutes, govern the timing and standards of decision for applications for conditional release or discharge from the custody of the director of health by:

- (1) Repealing the judicial call back provisions added to section 704-411, Hawaii Revised Statutes, by Act 100, Session Laws of Hawaii 2008; and
- (2) Including in section 704-412, Hawaii Revised Statutes, a time frame for decisions on motions for conditional release or discharge.

SECTION 2. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

**“§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.** (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

- (a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:

- (i) Is affected by a physical or mental disease, disorder, or defect;
- (ii) Presents a risk of danger to self or others; and
- (iii) Is not a proper subject for conditional release;

provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

- (b) The court shall order the defendant to be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or
- (c) The court shall order the defendant discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.

(2) The court, upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

- (3) When ordering a hearing pursuant to subsection (2):

- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the



defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and

- (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

~~[(5) The director of health may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of a person who is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. The director shall make this application in a report to the circuit from which the order was issued. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the order was issued.~~

~~(6) Any person committed pursuant to this chapter may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of the committed person acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the circuit from which the order was issued. The person shall transmit a copy of the application and letter or affidavit to the prosecuting attorney of the county from which the order was issued.~~

~~(7) Upon application to the court by either the director of health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the~~

~~court may extend the sixty-day time frame upon the request of the director of health or the person.~~

(8)] (5) In any proceeding governed by this section, the defendant's fitness shall not be an issue."

SECTION 3. Section 704-412, Hawaii Revised Statutes, is amended to read as follows:

**"§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person.** (1) After the expiration of at least ninety days following an original order of commitment pursuant to section 704-411(1)(a), or after the expiration of at least sixty days following the revocation of conditional release pursuant to section 704-413, if the director of health is of the opinion that the person committed is still affected by a physical or mental disease, disorder, or defect and may be granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make an application for either the conditional release or discharge of the person, as appropriate. In such a case, the director shall submit a report to the court by which the person was ordered committed and shall transmit copies of the application and report to the prosecuting attorney of the county from which the person was committed and to the person committed.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, or after the expiration of sixty days following the revocation of conditional release pursuant to section 704-413, the person committed may apply to the court from which the person was committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the person was committed. If the court denies the application, the person shall not be permitted to file another application for either conditional release or discharge until one year after the date of the hearing held on the immediate prior application.

(3) Upon application to the court by either the director of health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application; provided that for good cause the court may extend the sixty-day time frame upon the request of the director of health or the person committed."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 2009.)

## ACT 128

H.B. NO. 876

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514B-142, Hawaii Revised Statutes, is amended to read as follows:

**“[§514B-142] Aging in place[;] or disabled; limitation on liability.** (a) The association, its directors, unit owners, or residents, and their agents and tenants, acting through the board, shall not have any legal responsibility or legal liability, with respect to any actions and recommendations the board takes on any report, observation, or complaint made, or with respect to any recommendation or referral given, which relates to an elderly or disabled unit owner or resident who[;] may require services and assistance to maintain independent living in the unit in which the elderly or disabled unit owner or resident resides, so that the elderly or disabled unit owner or resident will not pose any harm or health or safety hazards to self or to others, and will not otherwise be disruptive to the condominium community because of [the following] problems of aging and aging in place[;] or living independently with a physical or mental disability or disabling condition. This section shall apply to elderly or disabled unit owners or residents whose actions or non-actions pose a risk to their own health or safety or to the health and safety of others, cause harm to the resident or others, or where physical or mental abuse may be life-threatening, and who exhibit the following characteristics:

- (1) The inability to clean and maintain an independent unit;
- (2) Mental confusion;
- (3) Abusing others;
- (4) Inability to care for oneself; or
- (5) Inability to arrange for home care[;]
- (6) Loneliness and neglect; or
- (7) Inappropriate requests of others for assistance.

For purposes of this section, “elderly” means age sixty-two and older.

(b) Upon a report, observation, or complaint relating to an elderly or disabled unit owner or resident aging or aging in place or living independently with a physical or mental disability or disabling condition, which notes a problem similar in nature to the problems enumerated in subsection (a), the board, in good faith, and without legal responsibility or liability, may request a functional assessment regarding the condition of an elderly or disabled unit owner or resident as well as recommendations for [the] services from mental health or medical practitioners, governmental agencies responsible for adult protective services, or non-profit or for-profit service entities which the elderly or disabled unit owner or resident may require to maintain a level of independence that enables the owner or resident to avoid any harm to self or to others, and to avoid disruption to the condominium community[;] provided that when a functional assessment is requested by the board, the unit owner or resident shall be deemed to be the client of the person or entity conducting the functional assessment. The board, upon request or unilaterally, and without legal responsibility or liability, may recommend available services, including assistance from state or county agencies and non-profit or for-profit service entities, to an elderly or disabled unit owner or resident which [might] may enable the elderly or disabled unit owner or resident to maintain a level of independent living with assistance, enabling in turn,

the elderly or disabled unit owner or resident to avoid any harm to self or others, and to avoid disruption to the condominium community.

(c) There is no affirmative duty on the part of the association, its board, the unit owners, or residents, or their agents or tenants to request or require an assessment and recommendations with respect to an elderly or disabled unit owner or resident when the elderly or disabled unit owner or resident may be experiencing the problems related to aging and aging in place or living independently with a physical or mental disability or disabling condition enumerated in subsection (a). The association, its board, unit owners, or residents, and their agents and tenants shall not be legally responsible or liable for not requesting or declining to request a functional assessment of, and recommendations for, an elderly or disabled unit owner or resident regarding problems relating to aging and aging in place[-] or living independently with a physical or mental disability or disabling condition.

(d) If an elderly or disabled unit owner or resident ignores or rejects a request for or the results from an assessment and recommendations, the association, with no liability for cross-claims or counterclaims, may file appropriate information, pleadings, notices, or the like, with appropriate state or county agencies or courts to seek an appropriate resolution for the condominium community and for the elderly or disabled unit owner[-] or resident.

(e) For the purposes of this section:

"Elderly" means age sixty-two and older.

"Disabled" means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

[(e)] (f) Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

[(f)] (g) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to title 11, chapter 90,<sup>1</sup> Hawaii Administrative Rules, as amended."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved June 17, 2009.)

#### Note

1. So in original.

## ACT 129

S.B. NO. 1107

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2000, the legislature, recognizing the need to clarify and update the State's condominium laws, directed the real estate commission to

conduct a comprehensive review of chapter 514A. The real estate commission reported the results of its study to the legislature in December 2003, and included proposed legislation that repealed the existing chapter 514A and replaced it with a new comprehensive condominium law. The final version of that measure, however, differed from the original version recommended by the commission. The legislature revisited the issue of condominium regulation in the 2005, 2006, and 2007 sessions, when it fine-tuned the “new” condominium law codified in chapter 514B and reinstated the “old” condominium law codified in chapter 514A. This resulted in two parallel chapters on condominiums as well as two separate trust funds designated for identically defined educational purposes.

The two educational trust funds obligate the real estate commission to duplicate its work by separately budgeting, planning, reporting to the legislature, and accounting for the receipts and expenses of the two funds. This result is administratively impractical, burdensome, and confusing.

The purpose of this Act is to merge the two funds into one fund, the condominium education trust fund, by repealing the condominium management education fund; transferring all unexpended and unencumbered balances remaining in the condominium management education fund to the credit of the condominium education trust fund; clarifying the allocation of future payments due to the credit of the condominium education trust fund, and changing all statutory references to the condominium education trust fund.

**SECTION 2.** Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and

unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, ~~the condominium management education fund, section 514A-131,~~ and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 3. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No effective date shall be issued by the commission for a final public report until the developer, pursuant to section 514B-72, has paid into the ~~[condominium management education fund]~~ condominium education trust fund established under section 514B-71 a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. ~~[Payments required under this subsection shall be due after June 13, 1989.]~~"

SECTION 4. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-46 Investigatory powers.** If the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.”

SECTION 5. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or the rules of the commission charged in the complaint. If, upon the hearing, the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.”

SECTION 6. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, ~~[514A-132, or]~~ 514A-134, or 514B-72, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.”

SECTION 7. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates or fails to comply with section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to ~~[514A-106, 514A-132, or 514A-134,]~~ 514A-105, 514A-134, or 514B-72 is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under section ~~[514A-2,]~~ 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to ~~[514A-106, 514A-132, or 514A-134]~~ 514A-105,<sup>1</sup> or 514B-72 shall be punished by a fine not exceeding \$10,000.”

SECTION 8. Section 514A-95.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each condominium project or association of apartment owners having ~~[six or]~~ more than five apartments shall:

- (1) Secure a fidelity bond in an amount equal to \$500 multiplied by the number of apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the funds of the association of apartment owners; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent, ~~[handling]~~ who have access to the funds of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section. An association of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide current evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission;
- (2) Register with the commission through approval of a completed registration application, payment of fees, and submission of any ~~[other]~~ additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any ~~[other]~~ additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall



be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project or association of apartment owners shall register within thirty days of the association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting ~~[and it is at least]~~ within one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity bond requirement for association of apartment owners. The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of the association of apartment owners' managing agent, if any, the street and the postal address of the condominium, and the name and current mailing address of a designated officer of the association of apartment owners where the officer can be contacted directly;

- (3) Pay a nonrefundable application fee and, upon approval, an initial registration fee ~~[and subsequently pay]~~ or a reregistration fee, and the ~~[condominium management education fund fee, as provided in]~~ condominium education trust fund fee pursuant to section 514B-72 and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (4) Register or reregister and pay the required fees by the due date. Failure to register or reregister or to pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or reregistration fee; and
- (5) Report immediately in writing to the commission any changes to the information contained on the registration or reregistration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements."

SECTION 9. Chapter 514A, part VIII, Hawaii Revised Statutes, is amended to read as follows:

**~~“[PART VIII.] CONDOMINIUM MANAGEMENT EDUCATION FUND]~~  
MISCELLANEOUS**

**~~[[§514A-131] Condominium management education fund.~~** (a) ~~The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:~~

- (1) ~~Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter;~~
- (2) ~~The improvement and more efficient administration of condominium associations; and~~
- (3) ~~Expeditious and inexpensive procedures for resolving condominium association disputes.~~

~~(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).~~

~~§514A-132 Payments to the fund.~~ (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs the condominium management education fund fee on or before June 30 of an odd-numbered year or within thirty days of the association of apartment owners' first meeting or within one year after the recordation of the purchase of the first apartment, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-131.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date, shall result in a penalty assessment of ten per cent of the amount due and the association of apartment owners shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.

~~§514A-133 Management of fund.~~ (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.

(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and
- (2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.]

~~[[§514A-134]] False statement.~~ It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact. Any violation of this section shall constitute a misdemeanor.

~~[[§514A-135]] Rules.~~ The real estate commission shall adopt rules pursuant to chapter 91 to effectuate fully the purpose of this [[part]].

SECTION 10. Section 514B-72, Hawaii Revised Statutes, is amended follows:

1. By amending subsection (a) to read:

“(a) Each project or association with more than five units, including any project or association with more than five units subject to chapter 514A, shall pay to the department of commerce and consumer affairs a condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association’s first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91.”

2. By amending subsection (d) to read:

“(d) The department of commerce and consumer affairs shall allocate the fees collected under this section, section 514A-40, and section 514A-95.1 to the condominium education trust fund established pursuant to section 514B-71. The fees collected pursuant to this section shall be administratively and fiscally managed together as one condominium education trust fund established by section 514B-71.”

SECTION 11. Section 514B-73, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§514B-73]]~~ **Condominium education trust fund; management.** (a) The sums received by the commission for deposit in the condominium education trust fund pursuant to sections 514A-40, 514A-95.1, and 514B-72 shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education trust fund collected pursuant to sections 514A-40, 514A-95.1, and 514B-72, and the rules of the commission to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium education trust fund collected pursuant to sections 514A-40, 514A-95.1, and 514B-72, and the rules of the commission may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees’ retirement system of the State. The interest and earnings from these investments shall be deposited to the credit of the condominium education trust fund.

(d) The commission shall annually submit to the legislature, no later than twenty days prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund[;], including a statement of which programs were directed specifically at the education of condominium owners; and
- (2) A copy of the budget for the current fiscal year, including summary information on programs that were funded or are to be funded[;] and the target audience for each program. The budget shall include a line item reflecting the total amount collected from condominium associations.”

SECTION 12. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the condominium management education fund respectively established, managed, and containing payments pursuant to sections 514A-40(c), 514A-131, 514A-132, and 514A-133, Hawaii Revised Statutes, existing as of the effective date of this Act to the credit of the condominium education trust fund as provided in sections 514B-71,

514B-72, and 514B-73, Hawaii Revised Statutes, upon the effective date of this Act. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 13. Any unencumbered and unexpended balance existing as of the effective date of this Act in the condominium management education fund established under chapter 514A, Hawaii Revised Statutes, shall be deposited into the condominium education trust fund established under chapter 514B, Hawaii Revised Statutes, and shall be held in trust by the real estate commission for carrying out the purpose of the condominium education trust fund.

SECTION 14. Until the real estate commission and the director of the department of commerce and consumer affairs amend the rules pursuant to chapter 91, Hawaii Revised Statutes, to change the name of the condominium management education fund, references to the condominium management education fund in the Hawaii Administrative Rules shall be deemed to be references to the condominium education trust fund.

SECTION 15. This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2009, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 16. The revisor of statutes shall replace the term “condominium management education fund” or like term whenever it may appear in the Hawaii Revised Statutes, with the term “condominium education trust fund.”

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 2009.

(Approved June 17, 2009.)

**Note**

1. Should be 514A-105.

**ACT 130**

S.B. NO. 1263

A Bill for an Act Relating to Tattoo Artists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XXX to be appropriately designated and to read as follows:

**“§321- Permit; required for tattoo shop and temporary locations.** (a) No person, partnership, firm, corporation, or other legal entity shall operate a tattoo shop or temporary location without a permit pursuant to department rules.

(b) Each initial permit application under this section shall be accompanied by a fee of \$125 for a permit valid for one year. For renewal of a permit,

each applicant shall pay a fee of \$75 per year. Initial permit application and renewal fees may be increased by not more than \$10 per year.

(c) All permits shall expire on December 31 of each year. The application for a permit renewal shall be submitted to the department in writing on or before December 31 annually.

(d) The department may issue a temporary permit valid for a maximum of seven consecutive days per calendar year for locations other than a permitted tattoo shop for the purpose of a trade show, product demonstration, or educational demonstration; provided that the show or demonstration shall meet all safety and hygiene standards as specified by the director and in this chapter. The temporary permit application shall be made in writing to the department at least sixty days prior to the scheduled event, shall include specific measures to meet specified health and safety standards, and may be subject to a site inspection. Temporary permit applicants shall pay a \$50 nonrefundable application fee in addition to:

- (1) A \$500 nonrefundable permit fee for an event featuring not more than forty participating tattoo artists; or
- (2) A \$50 nonrefundable permit fee for an event featuring less than three participating tattoo artists demonstrating for educational purposes only, without compensation, consideration, or donation by the public;

provided that the department may annually increase the fees specified in paragraphs (1) and (2) by not more than \$100 and \$10 per year, respectively.”

SECTION 2. Section 321-372, Hawaii Revised Statutes, is amended as follows:

1. By repealing the definition of “facial tattoo”:

~~[[“Facial tattoo” means any tattoo applied above the jawline, anterior to the ear and frontal hairline including the eyelids, eyebrows, or lips.”]~~

2. By amending the definition of “tattoo artist” to read:

“Tattoo artist” means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin, resulting in permanent or semi-permanent markings, with the aid of needles, electric machines, hand tools, or other devices[;] or means.”

SECTION 3. Section 321-373, Hawaii Revised Statutes, is amended to read as follows:

**“§321-373 Regulation of tattoo artists.** ~~[(a)]~~ The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician licensed under chapter 453 ~~[or 460,]~~ or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, reesterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.

~~[(b) The rules may provide for separate standards for facial tattoos.]”~~

SECTION 4. Section 321-374, Hawaii Revised Statutes, is amended to read as follows:

**“§321-374 License required; exemptions.** (a) Except as otherwise provided by law, no person shall practice the occupation of tattoo artist in this State ~~[either gratuitously or for pay]~~, with or without compensation, consideration, or donation, or shall announce oneself either publicly or privately as prepared or qualified to practice that occupation without having a valid unrevoked license ~~from the department~~ to do so.

(b) Physicians holding a valid unrevoked license under chapter 453 ~~[or 460]~~ are exempt from the requirements of this part.

(c) The department may issue, to tattoo artists who are not licensed in the State, temporary licenses that are valid for a maximum of fourteen consecutive days per calendar year for:

- (1) Educational, trade show, or product demonstration purposes; or
- (2) The purpose of practicing the occupation of tattoo artist at a permitted tattoo location.

Temporary licensees shall be subject to this part and applicable rules.

(d) Applications for temporary licenses shall be made in writing to the department at least sixty days prior to the proposed event and accompanied by a non-refundable application fee of \$100 and written proof satisfying the requirements under subsection (e). An applicant shall be notified of the disposition of the application within twenty business days of the receipt of application.

(e) An applicant for a temporary license shall have either:

- (1) Passed a blood borne pathogen course developed specifically for the tattoo industry, approved by the director, within two years of the date of application; or
- (2) Passed the state tattoo artist written examination within two years of the date of the application.

(f) Temporary license fees may be increased annually by not more than \$10.

(g) Licensed tattoo artists shall tattoo only in a shop or temporary location that has a valid unrevoked permit issued by the director.”

SECTION 5. Section 321-375, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score[.] or meets the criteria specified in section 321-374(e). No license shall be issued unless all fees required by the director have been paid.”

SECTION 6. Section 321-377, Hawaii Revised Statutes, is amended to read as follows:

**“§321-377 Suspension[.] or revocation[.] or denial of the renewal of permit or license.** (a) The director may revoke[.] or suspend[.] ~~or deny the renewal of~~ the permit or license of any person ~~[applying to be]~~ permitted or licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

(b) In every case where it is proposed to revoke[.] or suspend[.] ~~or deny the renewal of~~ a permit or license, the director shall give the permittee or licensee [or applicant] concerned notice and a hearing. The notice shall be given

in writing by registered or certified mail, with return receipt requested, at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91.”

SECTION 7. Section 321-379, Hawaii Revised Statutes, is amended to read as follows:

**“[§321-379] Discipline; complaints; grounds; proceedings; hearings.] Enforcement; penalties.** (a) [The director shall have the power to revoke, limit, condition, or suspend a license as a tattoo artist and to fine or otherwise discipline a licensed tattoo artist for any violation of subsection (b).] If the department determines that any person has violated or is violating any provision of this part, any rule adopted pursuant to this part, or any term or condition of a permit or license issued pursuant to this part, the department may take enforcement action and impose penalties as provided in section 321-20, except that the department may impose a penalty not to exceed \$10,000 per offense.

(b) [The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, who is a licensed tattoo artist regarding the following allegations:] Violations of this part include but are not limited to:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;
- (2) Habitual intemperance, addiction, or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice as a tattoo artist;
- (4) (1) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure licensure as a tattoo artist[~~which~~] that is false or untrue or contains any material misstatement of fact[;], or assisting another party in doing so;
- (5) (2) Using the title[;] licensed tattoo artist[;] or any other designation tending to imply that the person is a licensed tattoo artist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (6) (3) Violating the conditions or limitations [upon which licensure occurs;] of a permit or a license or assisting another party in violating those conditions;
- (7) (4) Engaging in [dishonorable, unethical, or unprofessional] conduct [of a character likely to deceive, defraud, or harm] resulting in physical injury to an individual or the public in the course of professional services or activities;
- (8) Having disciplinary action taken against the tattoo artist in another state;
- (9) (5) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this part;
- (10) Engaging in false or misleading advertising; or
- (11) Engaging in sexual conduct in connection with professional services or activities;
- (6) Tattooing any person under the age of eighteen without the written consent of the person's parent or legal guardian or not maintaining

the consent forms in a confidential manner at the tattoo shop for not less than two years; or

- (7) Making a false or misleading statement to the department relating to any matter under this part.

(c) An enforcement action under this section may be combined with a permit or license revocation or suspension under section 321-377 and may be brought together as one administrative action.

~~[(e)]~~ (d) In any proceeding under this section, the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.”

SECTION 8. Section 321-376, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 321-378, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 321-380, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 321-383, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect upon approval.

(Approved June 17, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 131**

S.B. NO. 113

A Bill for an Act Relating to Dentists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 448-4, Hawaii Revised Statutes, is amended to read as follows:

**“§448-4 Fraudulent advertising.** It shall be unlawful for any person to publish or circulate, directly or indirectly, any statements relating to the person’s practice of dentistry that are or tend to be false, fraudulent, or misleading. A violation of this section shall subject the licensee to the penalties provided in section 448-17.”

SECTION 2. Section 448-17, Hawaii Revised Statutes, is amended to read as follows:

**“§448-17 Refusal, revocation, suspension, and administrative penalties.** (a) The board shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and may refuse to issue a license to any applicant who has previously committed any act ~~[which]~~ that would, if committed by a licensee, result in the revocation or suspension of the license.



(b) In addition to any other actions authorized by law, the board may suspend or revoke any license issued under this chapter and may fine a licensee for any cause authorized by law, including but not limited to the following:

- (1) Fraud in procuring license;
- (2) Habitual intoxication or addiction to the use of drugs;
- (3) Wilful or repeated violations of the rules of the department of health;
- (4) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;
- (5) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient;
- (6) Assisting in the care or treatment of a patient, without the knowledge of the patient or the patient's legal representative;
- (7) Employing, procuring, inducing, aiding, or abetting a person not licensed [~~or registered~~] as a dentist to engage in the practice of dentistry;
- (8) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;
- (9) Professional connection or association with, or lending one's name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding oneself, themselves, or itself out in any manner contrary to this chapter;
- (10) By false or fraudulent representations, obtaining or seeking to obtain practice or money or any other thing of value;
- (11) Practicing, either in the State or elsewhere, under a name other than one's own;
- (12) Any other improper, unprofessional, or dishonorable conduct in the practice of dentistry; [~~and~~]
- (13) Violation of section 447-4[-]; and
- (14) False or misleading advertising not otherwise provided for under this subsection, including:

(A) Advertising to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association; and

(B) Using the following words or phrases in advertising when the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association:

- (i) "Dental public health";
- (ii) "Endodontics";
- (iii) "Oral and maxillofacial pathology";
- (iv) "Oral and maxillofacial radiology";
- (v) "Oral and maxillofacial surgery";
- (vi) "Orthodontics and dentofacial orthopedics";
- (vii) "Pediatric dentistry";
- (viii) "Periodontics"; or
- (ix) "Prosthodontics";

provided that this paragraph shall not apply to a dentist who advertises as being qualified in a recognized specialty area of dental practice so long as each advertisement, regardless of form, contains a prominent disclaimer that the dentist is a general dentist or that the specialty services will be provided by a general dentist.

~~[(b)]~~ (c) Any person who violates, or fails to comply with, any of the provisions of this chapter, the penalty for which is not otherwise provided, shall be fined not less than \$1,000 nor more than \$5,000.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved June 18, 2009.)

## ACT 132

H.B. NO. 1174

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Pursuant to the Hawaii Constitution and Hawaii Revised Statutes, the University of Hawaii is vested with autonomous authority to control and manage its educational and proprietary affairs. This authority extends to the use and oversight of lands and real property owned by the University of Hawaii or leased, demised, or transferred to the University of Hawaii from various owners, including state, federal, or private entities, for the furtherance of the University of Hawaii’s educational, research, and agricultural activities.

Such autonomous authority presumably carries with it the necessary legal means to supervise, oversee, and permit public activities on lands it leases and controls on Mauna Kea, including the Mauna Kea Science Reserve, Hale Pohaku, and the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve (collectively the Mauna Kea lands), and may be implied from the autonomous character of the University of Hawaii. Nevertheless, the purpose of this Act is to clarify and add certainty to the law relating to the University of Hawaii’s authority to manage and control public and commercial activities on the Mauna Kea lands by granting express authority to the University of Hawaii to adopt rules relating to public and commercial activities permitted or occurring on the Mauna Kea lands. In adopting the rules, the University of Hawaii shall address and reconcile any conflicts with other statutes or rules that are applicable to the Mauna Kea lands.

Administrative rules governing public and commercial activities on the Mauna Kea lands are necessary to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety. Administrative rules currently in effect for the surrounding forest reserve and natural area reserve lands managed by the department of land and natural resources do not apply to the Mauna Kea lands. Examples of public and commercial activities that could be covered by administrative rules include:

- (1) General access to sensitive resource areas, such as specific cultural features and identified natural resource habitat areas;
- (2) Traffic and off-road vehicle management and control;
- (3) Alcohol consumption;
- (4) Recreational activities; and
- (5) Commercial tour activities.

Access for traditional and customary native Hawaiian cultural and religious purposes shall be accommodated. The University of Hawaii shall encourage and foster a process of collaboration and involvement with the Mauna Kea lands advisory bodies and community interests to ensure that the process of

developing administrative rules is accomplished with community participation and input.

The purpose of this Act is to authorize the board of regents of the University of Hawaii to:

- (1) Charge fees and enter into lease agreements for the Mauna Kea lands;
- (2) In consultation with the office of Hawaiian affairs, adopt rules to regulate public and commercial activities on Mauna Kea lands that are consistent with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves;
- (3) In consultation with the office of Hawaiian affairs, establish and collect administrative fines for violations;
- (4) Establish the Mauna Kea lands management special fund to assist the University of Hawaii in its task of regulating the use of the Mauna Kea lands; and
- (5) Submit annual reports to the legislature.

SECTION 2. Chapter 304A, part IV, Hawaii Revised Statutes, is amended by adding a new subpart to be appropriately designated and to read as follows:

“ . MAUNA KEA LANDS

**§304A-A Definitions.** As used in this subpart:

“Board of regents” means the board of regents of the University of Hawaii.

“Fees” includes rents on leases of Mauna Kea lands, moneys received for use of Mauna Kea lands, moneys attributable to commercial activities on Mauna Kea lands, and moneys received for the use of facilities and programs on Mauna Kea lands.

“Mauna Kea lands” means the lands that the University of Hawaii is leasing from the board of land and natural resources, including the Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve, and any other lands on Mauna Kea that the University of Hawaii leases or over which the University of Hawaii acquires control or jurisdiction.

**§304A-B Mauna Kea lands; fees; lease agreements.** (a) The board of regents may charge a fee for use of the Mauna Kea lands and for the use of facilities and programs related to the Mauna Kea lands.

(b) The board of regents may enter into lease agreements for the Mauna Kea lands; provided that the University of Hawaii shall comply with all statutory requirements in the disposition of ceded lands.

(c) In establishing the fees, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the fees shall be established at an open public meeting pursuant to chapter 92. The fees shall be deposited into the Mauna Kea lands management special fund established under section 304A-F.

**§304A-C Mauna Kea lands rules.** The board of regents may adopt rules pursuant to chapter 91 to regulate public and commercial activities on Mauna Kea lands.

In adopting these rules, the board shall:

- (1) Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves;
- (2) Consult with the office of Hawaiian affairs to ensure that these rules shall not affect any right, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights; and
- (3) Hold at least one public hearing, in addition to the public hearing at which decision making on the proposed rule is made, on the island of Hawaii.

**§304A-D Violations; penalties; costs; collection.** (a) In consultation with the office of Hawaiian affairs, the board of regents may set and provide for the assessment and collection of administrative fines for violations of this subpart or rules adopted hereunder; provided that the fines shall be set as follows:

- (1) For the first violation, not more than \$2,500;
  - (2) For the second violation within five years of a previous violation, not more than \$5,000; and
  - (3) For the third violation within five years of a prior violation and any subsequent violation, not more than \$10,000.
- (b) Each day that the violation continues shall constitute a separate offense.
- (c) The costs of any enforcement proceedings, including the costs of contested case proceedings, may be assessed against a party found to be in violation.
- (d) Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

**§304A-E Mauna Kea lands; reporting requirements.** The board of regents shall report annually to the legislature, no later than twenty days prior to the convening of each regular session, on the Mauna Kea lands activities, current and pending lease agreements and fees, the status of current and pending administrative rules, income and expenditures of the Mauna Kea lands special fund established in section 304A-F, and any other issues that may impact the activities of the Mauna Kea lands.”

SECTION 3. Chapter 304A, part V, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§304A-F Mauna Kea lands management special fund.** (a) There is established the Mauna Kea lands management special fund, into which shall be deposited:

- (1) Appropriations by the legislature;
  - (2) All net rents from leases, licenses, and permits, including fees and charges for the use of land and facilities within the Mauna Kea lands;
  - (3) All moneys collected for violations of subpart of part IV; and
  - (4) Interest earned or accrued on moneys in the special fund.
- (b) The proceeds of the special fund shall be used for:
- (1) Managing the Mauna Kea lands, including maintenance, administrative expenses, salaries and benefits of employees, contractor

services, supplies, security, equipment, janitorial services, insurance, utilities, and other operational expenses; and

(2) Enforcing administrative rules adopted relating to the Mauna Kea lands.

(c) No moneys deposited into the Mauna Kea lands management special fund may be used by the governor or the director of finance as a justification for reducing any budget request or allotment to the University of Hawaii unless the University of Hawaii requests the reduction.

(d) The University of Hawaii may establish separate accounts within the special fund for major program activities.

(e) All expenditures from the special fund shall be subject to legislative appropriation.

(f) For the purposes of this section, "Mauna Kea lands" shall mean the same as defined in section 304A-A."

SECTION 4. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 18, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 133**

S.B. NO. 971

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to conform Hawaii income tax law to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For all taxable years beginning after December 31, [2007.] 2008, as used in this chapter, "Internal Revenue Code" means [sub*title A, chapter 1,*] Sub*title A, Chapter 1,* of the federal Internal Revenue Code of 1986, as amended as of December 31, [2007.] 2008, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income, except those provisions of the Internal Revenue Code and federal public laws which, pursuant to this chapter, do not apply or are otherwise limited in application and except for the provisions of Public Law 109-001 which apply to [section] Section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978."

SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

**"§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Sections 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction [amount in section 63(e) of the Internal Revenue Code] amounts provided therein shall instead mean:
  - (+)(A) \$4,000 in the case of:
    - ~~[(A)]~~ (i) A joint return as provided by section 235-93; or
    - ~~[(B)]~~ (ii) A surviving spouse (as defined in ~~[section]~~ Section 2(a) of the Internal Revenue Code);
  - (2)(B) \$2,920 in the case of a head of household (as defined in ~~[section]~~ Section 2(b) of the Internal Revenue Code);
  - (3)(C) \$2,000 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
  - (4)(D) \$2,000 in the case of a married individual filing a separate return[-];
- [Section 63(e)(4) shall not be operative in this State.]
- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation [on basic standard deduction in the case of certain dependents] shall be the greater of \$500 or such individual's earned income[-. Section 63(f) shall not be operative in this State-]; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in ~~[section]~~ Section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this

chapter, except that for the election under ~~[section]~~ Section 121(f), a reference to ~~[section]~~ Section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in ~~[section]~~ Section 163(d)(4)(B) (defining net investment income to exclude dividends) shall not be operative for the purposes of this chapter.

(e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter~~[-]~~, except that the amount prescribed by Section 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and Sections 165(h)(3) (A) and 165(h)(3)(B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(f) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that ~~[provisions relating]~~ Sections 168(j) (relating to property on Indian [reservations in section 168(j) and] reservations), 168(k) (relating to the special allowance for certain property acquired [after September 10, 2001, and before January 1, 2005 (including the extension of the qualifying aircraft placed in service before January 1, 2006), in section 168(k)] during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(g) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that Sections 172(b)(1)(J) and 172(j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(g)]~~ (h) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(2);
- (3) The increase of the maximum deduction to \$250,000 and the increase of the qualifying investment amount to \$800,000 for taxable years beginning in 2008, in Section 179(b)(7);
- [~~(3)~~] (4) Defining ~~[section]~~ Section 179 property to include computer software in ~~[section]~~ Section 179(d)(1);
- [~~(4)~~] (5) Inflation adjustments in ~~[section]~~ Section 179(b)(5); ~~[and~~
- [~~(5)~~] (6) Irrevocable election in ~~[section]~~ Section 179(c)(2); and
- (7) Special rules for qualified disaster assistance property in Section 179(e).

shall not be operative for the purposes of this chapter.

(i) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(h)]~~ (j) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in ~~[section]~~ Section 219 as operative for this chapter means federal adjusted gross income.

~~[(f)]~~ (k) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

~~[(g)]~~ (l) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

~~[(k)]~~ (m) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in ~~[section]~~ Section 408A as operative for this chapter means federal adjusted gross income.

~~[(f)]~~ (n) In administering the provisions of ~~[sections]~~ Sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), ~~[sections]~~ Sections 418 to 418E (with respect to special rules for multiemployer plans), and ~~[sections]~~ Sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of ~~[sections]~~ Sections 410 to 419A.

In administering ~~[sections]~~ Sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, ~~[section]~~ Section 1017(i), shall be operative for the purposes of this chapter.

In administering ~~[section]~~ Section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by ~~[section]~~ Section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(o) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that the provisions of Sections 451(i)(3) and 451(i)(6), as they relate to a qualified electric utility, shall not be operative for purposes of this chapter.

~~[(m)]~~ (p) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a



rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(n)]~~ (q) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in ~~[section]~~ Section 469 as operative for this chapter means federal adjusted gross income.

~~[(o)]~~ (r) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in ~~[section]~~ Section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

~~[(p)]~~ (s) Section 521 (with respect to cooperatives) and ~~[subchapter T (sections)]~~ Subchapter T (Sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of ~~[section]~~ Section 421-23, except that Internal Revenue Code ~~[section]~~ Section 521 cooperatives need not be organized in Hawaii.

~~[(q)]~~ (t) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each ~~[such section]~~ Section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(r)]~~ (u) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that ~~[section]~~ Section 529(c)(6) shall not be operative.

~~[(s)]~~ (v) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in ~~[section]~~ Section 530 as operative for this chapter means federal modified adjusted gross income as defined in ~~[section]~~ Section 530.”

SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b);
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an in-

dividual, unless the contributions and gifts are to be used exclusively in the State; and

- (3) The tax imposed by ~~[section]~~ Section 1(e) of the Internal Revenue Code as applied by ~~[section]~~ Section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

(b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which ~~[section]~~ Section 103 of the Internal Revenue Code applies in ~~[section]~~ Section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under ~~[section]~~ Section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying ~~[section]~~ Section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that ~~[section]~~ Section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9;
- (2) Allocations of net operating loss pursuant to section 235-111.5;
- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.

(e) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter, the capital loss carryback provisions of ~~[section]~~ Section 1212 shall not be operative and the capital loss carryforward allowed by ~~[section]~~ Section 1212(a) shall be limited to five years; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

(f) Section 1221 (with respect to the definition of capital assets) is operative; provided that the provisions of Section 301 of Public Law 110-343, which provide that gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution (such terms being defined by Public Law 110-343) shall be treated as ordinary income or loss, shall not be operative. A sale or exchange of any applicable preferred stock by any applicable financial institution (as those terms are defined by Section 301 of Public Law 110-343) shall be treated as a sale of a capital asset and taxed accordingly.

~~[(f)]~~ (g) Subchapter S ~~[(sections)]~~ (Sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

~~[(g)]~~ (h) Section 1400N (with respect to tax benefits for Gulf Opportunity Zone) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that ~~[sections]~~ Sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain

tax-exempt bonds); 1400N(c) (with respect to the low income housing credit); 1400N(d) (with respect to special allowance for certain property acquired on or after August 28, 2005); 1400N(e) (with respect to increase in expensing under ~~[section]~~ Section 179); 1400N(h) (with respect to increase in rehabilitation credit); 1400N(l) (with respect to credit to holders of Gulf tax credit bonds); 1400N(m) (with respect to application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone); 1400N(n) (with respect to treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements) shall not be operative for purposes of this chapter.

~~[(h)]~~ (i) Section 1400S (with respect to additional tax relief provisions) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that ~~[section]~~ Section 1400S(d) (with respect to the special rule for determining earned income) shall not be operative for the purposes of this chapter.

~~[(h)]~~ (i) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

~~[(j)]~~ (k) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to disclosures of information to the United States Justice Department or appropriate federal or state law enforcement agency for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning investigating terrorist incidents, threats, or activities) of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(k)]~~ (l) Subchapter C ~~[(sections]~~ (Sections 6221 to 6233) (with respect to tax treatment of partnership items) of ~~[chapter]~~ Chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(h)]~~ (m) Subchapter D ~~[(sections 6240 to 6255)]~~ (Sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(n) Section 6501(e) (with respect to limitation on assessment and collection where there is a substantial omission of items) of the Internal Revenue Code shall be operative for purposes of this chapter.

~~[(m)]~~ (o) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

~~[(m)]~~ (p) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 18, 2009.)

A Bill for an Act Relating to Tax Administration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In all tax systems, government administrators are continually working to reduce tax noncompliance known as the "tax gap." In the United States, the tax gap, which is the difference between the amount of tax that is required to be reported and timely paid and the amount of tax that is actually reported and paid, is estimated to be almost \$400,000,000,000 per year. Of this tax gap, it is further estimated that about \$200,000,000,000, or half of the tax gap, is composed of what is known as the "cash economy." Hawaii's annual tax gap is estimated to be about \$2,000,000,000 in unreported and unpaid taxes with approximately \$1,000,000,000 attributed to the cash economy. Focusing resources on shoring up compliance in this area should be a priority.

Cash-based transactions are a fundamental part of any economy. As the oldest form of payment, cash continues to dominate many facets of the local economy. Cash is inherently private, efficient, and predictable for both purchaser and seller. However, cash transactions are also the simplest means of underreporting or non-reporting for tax purposes, because no bank, no means of electronic oversight, and no intermediary maintains records of the movement of funds from one pocket to another.

As stated by former Internal Revenue Service Commissioner Mark Everson, "[t]he vast majority of Americans pay their taxes accurately and are short-changed by those who don't pay their fair share. The magnitude of the tax gap highlights the critical role of enforcement in keeping our system of tax administration healthy." By focusing resources on the cash economy, the department of taxation can ensure fairness in the tax system for those that comply without raising taxes or otherwise substantially burdening Hawaii's economy as a whole.

The purpose of this Act is to provide the department of taxation with the necessary resources and tools to target high-risk, cash-based transactions to shore up confidence in Hawaii's tax system for those that do comply. Importantly, the legislature intends that the enforcement resources provided focus on the civil collection and enforcement nature of Hawaii's tax laws. In an effort to demonstrate the targets of this undertaking, this Act defines "cash-based business" for enforcement purposes, and the department of taxation is directed to focus on such businesses. At the same time, education is equally important as enforcement. Therefore, this Act requires the department of taxation to reach out to industry groups, specific demographics in the economy, and practitioners to educate taxpayers on their tax responsibilities.

This Act shall be known as the "Cash Economy Enforcement Act of 2009."

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding sixteen new sections to be appropriately designated and to read as follows:

#### **"CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION**

**§231-A Special enforcement section; created.** There is created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require.

**§231-B Special enforcement section; functions, powers, and duties.** The special enforcement section shall have the following functions, powers, and duties:

- (1) Investigate reported or suspected violations of tax laws for civil enforcement purposes, including through covert means, with a stated priority of investigating cash-based businesses as defined in section 231-I;
- (2) Enforce the tax laws by issuing, enforcing, or executing citations, fines, infractions, assessments, liens, levies, writs, warrants, injunctions, or other process;
- (3) Serve as fraud referral specialists to assist in the development and review of fraud cases for appropriate disposition of potentially fraudulent activities, including referral to criminal investigators and assessment of civil fraud penalties; provided that personnel assigned to the special enforcement section may not participate in any criminal investigation;
- (4) Organize and hold public informational meetings on issues of tax laws, including compliance deficiencies in segments of the economy, and undertake any other activities to encourage taxpayers, practitioners, or others to maintain responsibility and compliance with their tax obligations;
- (5) Coordinate with other sections or divisions within the department of taxation, other departments or branches of the state government, any branches of the county government, or the federal government on matters relating to civil enforcement of the tax laws, including joint investigations, information-sharing arrangements, or concurrent collection efforts; provided that personnel assigned to the special enforcement section may not participate in any criminal investigation;
- (6) Compile information received by third parties, including taxpayers, competitors, government agencies, confidential sources, or public sources and delegate this information within the department for proper handling. Proper handling may include referral internally to other civil or criminal enforcement sections;
- (7) Conduct investigations, research, and studies of matters relevant to the complex or sensitive civil enforcement of the tax laws; and
- (8) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section or as otherwise directed by the director of taxation.

**§231-C Investigators and personnel, appointment and power.** (a) The director of taxation may appoint, commission, or detail to the special enforcement section one or more persons as investigators, investigator assistants, and other support staff as the exigencies of the public service may require. Investigators may be legal or accounting professionals; provided that their primary duty is to conduct investigations pursuant to the authorities of the special enforcement section and they shall not conduct or participate in criminal investigations of the tax laws or render legal advice. Investigators may serve process and apply for and execute search warrants or writs of entry pursuant to section 231-D but shall not otherwise have the powers of a police officer or deputy sheriff.

(b) Notwithstanding any other law to the contrary relating to employment, bargaining, labor, or compensation rights or duties, any person appointed, commissioned, or detailed to the special enforcement section:

- (1) May be an employee of the department in any capacity, including exempt from or subject to chapters 76 and 89 as an employee of the department;
- (2) Shall be exempt from chapters 76 and 89 for purposes of their appointment, commission, or detail capacity as investigator, whether full-time, part-time, or temporary;
- (3) May be appointed, commissioned, or detailed in any capacity, and whose appointment, commission, or detail may be dismissed at the pleasure of the director of taxation;
- (4) If appointed, commissioned, or detailed on a temporary basis, shall have the right to return to the person's same position or to a related position in the same class or division within the department when the person's appointment expires. The return rights provided under this section shall apply to persons exempt from or subject to chapters 76 and 89; and
- (5) May be paid overtime as prescribed by an applicable collective bargaining agreement or existing policy for excluded employees. The compensation rights under this section shall apply to persons exempt from or subject to chapters 76 and 89.

**§231-D Right to inspection of books, records, and premises; warrants and writs; levy and seizure.** (a) Upon presenting credentials, the special enforcement section may examine any books, papers, records, and any article or item of business transacted of any person engaged in business in this State to verify the accuracy of the reporting and payment of the taxes imposed by law. Every person in possession of any books, papers, records, or articles or items of business transacted, and the person's agents and employees, shall provide the special enforcement section the means, facilities, and opportunities for the examinations upon request, to the extent reasonably possible under the circumstances.

(b) The special enforcement section may inspect the operations, premises, and storage areas of any person engaged in business in this State during regular business hours.

(c) The special enforcement section may inspect the operations, premises, and storage areas of any person engaged in business in this State at any time, without notice, upon the issuance of a warrant or writ of entry based upon probable cause of a violation under title 14. The determination of probable cause for purposes of this section shall be made based upon the standard of probable cause for an administrative or civil search or seizure. Application for a search warrant or writ of entry under this section shall be made by making a declaration, under oath, which includes the following:

- (1) The taxpayer's form of business;
- (2) The taxpayer's interest in and address of the premises sought to be searched;
- (3) Whether permission to search the premises has been requested in advance of requesting the warrant or writ;
- (4) The particular books, records, items, articles, assets, or contraband reasonably believed to be on the premises; and
- (5) The alleged violation reasonably believed to have occurred, including nonpayment of taxes; and, if searching or seizing in furtherance of collection, identification of the assets reasonably believed to be on the premises.

The special enforcement section may apply to the circuit court where the person is located for issuance of such warrant or writ. The special enforcement section may execute warrants or writs of entry. Any police officer, criminal inves-

tigator, or deputy sheriff of this State or any county shall be required to render assistance and aid to the special enforcement section in executing warrants and writs, upon request. Criminal law enforcement agencies that assist the special enforcement section may be compensated, as determined by the director; provided that no person or agency shall be compensated on the basis of a specific percentage or fraction of the money collected from taxpayers.

(d) The special enforcement section's ability to inspect shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, articles or items of business transacted, including inventory, supplies, stock, and cash on hand, pertaining to the sales or other business activities of any person to verify the accuracy of the reporting and payment of taxes imposed by law.

(e) The special enforcement section may seize and levy any assets in the custody or control of any person pursuant to this chapter, and subject to all rights of appeal set forth herein.

**§231-E Identification of cash-economy cases; retention of funds.** Notwithstanding any law to the contrary, each fiscal year, the special enforcement section may identify any taxpayer, assessment, investigation, or collection matter as a matter of the special enforcement section. All revenues collected from special enforcement section matters shall be deposited into the tax administration special fund.

**§231-F Violent interference with a tax official.** Any person who interferes, hinders, obstructs, prevents, or impedes any investigator or employee of the department with violence or threat of violence, shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$4,000;
- (2) Imprisonment for not more than three years; or
- (3) Probation;

provided that a corporation shall be fined not less than \$10,000.

This section shall be construed in accordance with regulations and judicial interpretations given to similar provisions of the Internal Revenue Code.

## **CASH ECONOMY ENFORCEMENT; CITATIONS**

**§231-G Citations for violations; deposits.** (a) The special enforcement section may issue cease and desist citations to any person if the special enforcement section has cause to believe the person has violated, is violating, or is about to violate any provision of title 14 or administrative rule adopted thereunder. A cease and desist citation may include a monetary fine for any unlawful act.

(b) The department may recommend legislation defining the circumstances and the civil monetary fines citable for unlawful actions under title 14.

(c) Any fine assessed under this section shall be a matter of the special enforcement section under section 231-E and shall be retained and deposited into the tax administration special fund.

(d) Any fine assessed shall be due and payable thirty days after issuance, subject to appeal rights provided under subsection (e); provided that if payment of the fine is determined to be in jeopardy, such fine shall be payable immediately and shall be immediately collected. A finding of jeopardy shall be made in writing, setting forth the specific reasons for the finding. The finding of jeopardy shall be subject to immediate appeal under subsection (e), and at the taxpayer's request the appeal shall be expedited and heard as soon as reasonably practica-

ble. Any amount of fine collected under jeopardy shall only be returned upon a finding by the director of taxation or the circuit court that there was no violation of title 14 pursuant to appeal rights provided under subsection (e).

(e) Cease and desist citations may be appealed to the director of taxation or the director's designee, and the determination of the director may be appealed to the circuit court, pursuant to chapter 91.

**§231-H Cash-based businesses; injunction.** The special enforcement section, with the director of taxation's approval, may bring civil actions in the circuit court where the cash-based business is located to enjoin any unlawful act under title 14, including any administrative rule adopted thereunder, by a cash-based business. To the extent provided by statute, the special enforcement section may include in any action an assessment of a monetary fine.

**§231-I Cash-based business; defined.** For purposes of sections 231-G to 231-P, "cash-based business" means any person who operates a business, including for-profit or not-for-profit, where transactions in goods or services are exchanged substantially for cash and where the business is found, based upon reasonable cause including observation or evidence, to have met one of the following factors:

- (1) Is found to have substantially underreported or misrepresented the proper amount of tax liability on any return or other submission to the department. For purposes of this paragraph, an amount has been substantially underreported if the amount properly includible on the return or submission is in excess of twenty-five per cent of the amount stated on the return or submission;
- (2) Is required to be licensed, registered, or permitted under title 14 and is in fact not so licensed, registered, or permitted;
- (3) Has a past pattern of noncompliance of obligations under title 14;
- (4) Does not have a fixed and permanent principal place of business;
- (5) Has not obtained any required tax clearance;
- (6) Has failed to maintain adequate books and records, or those records required to be maintained by law or administrative rule;
- (7) Does not accept checks or electronic payment devices for business transactions; provided that a business may establish reasonable criteria for accepting personal checks;
- (8) Offers price differentials or otherwise deviates from usual business practices when the business transaction substantially involves payment of cash, except where there is a bona-fide business reason for a price differential, such as the avoidance of merchant fees imposed by credit card companies; or
- (9) Any other factor relevant to describing a cash-based business capable of noncompliance as determined by the director of taxation and issued pursuant to a tax information release;

provided that a business shall not be deemed to have met any of these factors while a genuine dispute as to that factor is pending in a contested case before any administrative agency or in any court.

**§231-J Failure to produce license upon demand.** Every person required to be licensed or permitted under title 14, whether or not so licensed or permitted, shall be required to produce the license or permit upon demand by the special enforcement section. Failure to produce the license or permit upon demand shall be unlawful. Any person who violates this section shall be subject to a fine not to exceed \$500; provided that if the person is a cash-based business, the fine shall



not exceed \$1,000. It shall be an absolute defense to this section if the person produces a license or permit number on file with the department and the department confirms that the person associated with the number is true and accurate.

**§231-K Failure to keep adequate books and records.** It shall be unlawful for any person required under title 14 to keep books or records to fail to produce the books or records upon demand by the special enforcement section, or as soon thereafter as is reasonable under the circumstances. Any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000.

**§231-L Failure to record transaction by receipt.** It shall be unlawful to conduct more than ten taxable business transactions per day in cash and fail to provide a receipt or other record of the transaction when the means for issuing a receipt or recording the transaction are available. Each day a person is in violation of this section shall be treated as a separate violation. Any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000.

**§231-M Failure to record transaction by register.** It shall be unlawful to conduct more than ten taxable business transactions per day in cash and fail to record the transaction in a cash register when the means for recording the transaction in a cash register are available. Each day a person is in violation of this section shall be treated as a separate violation. Any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000.

**§231-N Tax avoidance price fixing.** It shall be unlawful for any person to sell, offer to sell, or otherwise convey more than one price for any business to be transacted when the lower price is offered if the transaction is paid for in cash. It shall not be an offense under this section if a business charges a higher price for legitimate business purposes, such as for the purpose of recovering any charges assessed the business, including for facilitating electronic payment. Any person who violates this section shall be subject to a fine not to exceed \$2,000; provided that if the person is a cash-based business, the fine shall not exceed \$3,000.

**§231-O Possession of currency for tax avoidance purposes.** It shall be unlawful for any person engaged in business in this State to possess currency in the form of coin or note, where the possession is for tax avoidance purposes. It shall be the department's burden to establish that currency is possessed for tax avoidance purposes; provided that circumstantial evidence may be used by the department in any proceeding. Any person who violates this section shall be subject to a fine not to exceed \$2,000; provided that if the person is a cash-based business, the fine shall not exceed \$3,000.

**§231-P Interference with a tax official.** It is unlawful for any person to intentionally interfere with, hinder, obstruct, prevent, or impede any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property rightfully entitled the department. Any person who violates this section shall be subject to a fine of not more than \$2,000. It shall be an absolute defense to the fine under this section that the person acted with good cause."

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Reporting requirement for contractors on federal construction projects.** All persons who do not possess a valid license under this chapter at the time of the contract award and who contract with the federal government for any construction project located in the State shall report to the department, on forms prescribed by the department, its estimated gross receipts or any other information requested by the department on the prescribed form, from the construction project within thirty days of the contract being awarded. Failure to report as provided in this section shall result in a penalty of \$1,000 per month, or fraction thereof, for each month that a failure to report exists; provided that the maximum penalty allowed under this section in the aggregate shall not be more than \$6,000.”

SECTION 4. Section 231-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person” [as used in sections 231-34, 231-35, and 231-36] includes one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act ~~[in respect of which the violation occurs].~~”

SECTION 5. Section 235-20.5, Hawaii Revised Statutes, is amended to read as follows:

**“§235-20.5 Tax administration special fund; established.** (a) There is established a tax administration special fund, into which shall be deposited [fees];

- (1) Fees collected under sections 235-20, 235-110.9, and 235-110.91[; and penalties];
- (2) Penalties collected under section 2 of Act 206, [H]Session Laws of Hawaii 2007[;]; and
- (3) Revenues collected by the special enforcement section pursuant to section 231-E; provided that in each fiscal year, of the total revenues collected by the special enforcement section, all revenues in excess of \$500,000 shall be deposited into the general fund.

(b) The moneys in the fund shall be ~~[expended by the department to offset the costs associated with:]~~ used for the following purposes:

- (1) Issuing comfort letters[;], letter rulings, written opinions, and other guidance to taxpayers;
- (2) Administering the tax [credit] credits under [section] sections 235-110.9[;including issuing certificates; and
- (3) Issuing certificates under section] and 235-110.91[;]; and
- (3) Administering the operations of the special enforcement section.”

SECTION 6. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

**“§237-9 Licenses; penalty.** (a) Except as provided in this section, any person who has a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent

to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of \$20, a license to engage in and to conduct such business, upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. ~~[Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of \$20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business.]~~ The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one-time license fee of \$20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) Any person who receives gross income or gross proceeds of sales or value of products from engaging in business in the State and who fails to obtain a license or receives gross income or gross proceeds of sales or value of products from engaging in business in the State without a license required under this section may be fined not more than \$500; provided that a cash-based business may be fined not less than \$500 and not more than \$2,000, as determined by the director or the director's designee. The penalty under this subsection shall be in addition to any other penalty provided under law and may be waived or canceled upon a showing of good cause.

~~[(e)]~~ (d) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

~~[(d)]~~ (e) The director may permit a person engaged in network marketing, multi-level marketing, or other similar business to obtain the license required under this section for purposes of becoming a tax collection agent on behalf of its direct sellers. The tax collection agent shall report, collect, and pay over the taxes due under this chapter and chapter 238 on behalf of its direct sellers who are covered by the tax collection agreement. The tax collection agent's direct sellers shall be deemed to be licensed under this chapter; provided that the licensure shall apply solely to the business activity conducted directly through the marketing arrangement. Under this section, a tax collection agent shall:

- (1) Notify all of its direct sellers making sales in the State that it has been designated to collect, report, and pay over the tax imposed by this chapter and chapter 238 on their behalf on the business activity conducted through the marketing arrangement;
- (2) If required by the director as a condition of obtaining the license, furnish with the annual return, a list (including identification numbers) of all direct sellers for the taxable year who have been provided (by the tax collection agent) information returns required under

[section] Section 6041A of the Internal Revenue Code of 1986, as amended, and any other information that is relevant to ensure proper payment of taxes due under this section; and

- (3) Be personally liable for the taxes due and collected under the tax collection agreement if taxes are collected, but not reported or paid, together with penalties and interest as provided by law.

[(e)] (f) For the purposes of this section:

"Cash-based business" has the same meaning as in section 231-I.

"Consumer product" shall include tangible consumer products and intangible consumer services.

"Direct seller" means any person who is engaged in the trade or business of selling (or soliciting the sale of) consumer products:

- (1) To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, that the director prescribes by rule adopted pursuant to chapter 91, for resale other than in a permanent retail establishment;
- (2) Other than in a permanent retail establishment; provided that:
  - (A) Substantially all the remuneration (whether or not paid in cash) for the sale of consumer products is directly related to sales or other output rather than to the number of hours worked; and
  - (B) The sales of consumer products by the person are performed pursuant to a written contract that provides that the person will not be treated as an employee with respect to those sales for federal or state tax purposes.

"Direct seller" includes individuals who realize remuneration dependent on the productivity of other individuals in the marketing arrangement.

"Network marketing" or "multi-level marketing" means a marketing arrangement in which consumer products are distributed and sold to or through direct sellers."

SECTION 7. Section 237-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the case of any person entitled to the protection of section [237-9(e)], 237-9(d), the tax shall be collected only through ordinary means."

SECTION 8. The department of taxation may establish six new full-time equivalent (6.0 FTE) positions that may be staffed by investigators, investigator assistants, licensed attorneys, or other support staff, in addition to using current and existing employees of the department of taxation, to staff the special enforcement section established in section 2 of this Act as the exigencies of the public service may require.

SECTION 9. The department of taxation shall report to the legislature no later than thirty days prior to the convening of each regular session the state resources committed to implementing this Act, and the additional revenues raised therefor.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. In codifying the new sections added to chapter 231, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall

substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to section 235-20.5, Hawaii Revised Statutes, by this Act shall not be repealed when section 235-20.5, Hawaii Revised Statutes, is reenacted on January 1, 2011, pursuant to section 8 of Act 206, Session Laws of Hawaii 2007;
- (2) Sections 231-F, 231-J, 231-K, 231-L, 231-M, 231-N, 231-O, and 231-P, Hawaii Revised Statutes, in section 2 of this Act shall take effect on July 1, 2009; and
- (3) This Act shall be repealed on June 30, 2014, and section 235-20.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of section 8 of Act 206, Session Laws of Hawaii 2007; provided further that sections 231-1, 237-9, and 237-12(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved June 18, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 135**

H.B. NO. 618

A Bill for an Act Relating to the Uniform Prudent Management of Institutional Funds Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS  
ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

“Community foundation” means a community foundation or community trust recognized as exempt from federal income tax and referred to in Section

170(c) of the Internal Revenue Code of 1986, as amended, and which meets the single entity requirements of United States Treasury Regulations Sections 1.170A-9(e)(10-14) adopted thereunder.

“Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

“Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

“Institution” means:

- (1) A person, other than an individual, organized and operated exclusively for charitable purposes;
- (2) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or
- (3) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

“Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

- (1) Program-related assets;
- (2) A fund held for an institution by a trustee that is not an institution, unless the fund is held exclusively for the benefit of a community foundation; or
- (3) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **§ -3 Standard of conduct in managing and investing an institutional fund.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution shall:

- (1) Incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
- (2) Make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

- (1) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:
  - (A) General economic conditions;
  - (B) The possible effect of inflation or deflation;
  - (C) The expected tax consequences, if any, of investment decisions or strategies;
  - (D) The role that each investment or course of action plays within the overall investment portfolio of the fund;
  - (E) The expected total return from income and the appreciation of investments;
  - (F) Other resources of the institution;
  - (G) The needs of the institution and the fund to make distributions and to preserve capital; and
  - (H) An asset's special relationship or special value, if any, to the charitable purposes of the institution;
- (2) Management and investment decisions about an individual asset shall not be made in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution;
- (3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section;
- (4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification;
- (5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or the rebalancing of a portfolio, to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter; and
- (6) A person who has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**§ -4 Appropriation for expenditure or accumulation of endowment fund; rules of construction.** (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund shall be donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) The duration and preservation of the endowment fund;
  - (2) The purposes of the institution and the endowment fund;
  - (3) General economic conditions;
  - (4) The possible effect of inflation or deflation;
  - (5) The expected total return from income and the appreciation of investments;
  - (6) Other resources of the institution; and
  - (7) The investment policy of the institution.
- (b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument shall specifically state the limitation.
- (c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:
- (1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
  - (2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a).

**§ -5 Delegation of management and investment functions.** (a) Subject to any specific limitation set forth in a gift instrument or otherwise provided by law, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) Selecting an agent;
  - (2) Establishing the scope and terms of the delegation consistent with the purposes of the institution and the institutional fund; and
  - (3) Periodically reviewing the agent's actions to monitor the agent's performance and compliance with the scope and terms of the delegation.
- (b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.
- (c) An institution that complies with subsection (a) shall not be liable for the decisions or actions of an agent to which the function was delegated.
- (d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.
- (e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by the laws of this State.

**§ -6 Release or modification of restrictions on management, investment, or purpose.** (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction on the management, investment, or purpose of an institutional fund contained in a gift instrument. A release or modification shall not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if



it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, without application to the court, but with the consent of the attorney general, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument if the fund subject to the restriction has a total value of less than \$250,000.

(e) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

- (1) The institutional fund subject to the restriction has a total value of less than \$50,000;
- (2) More than twenty years have elapsed since the fund was established; and
- (3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**§ -7 Reviewing compliance.** Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**§ -8 Application to existing institutional funds.** This chapter shall apply to institutional funds existing on or established after July 1, 2009. As applied to institutional funds existing on July 1, 2009, this chapter shall govern only decisions made or actions taken on or after that date.

**§ -9 Relation to Electronic Signatures in Global and National Commerce Act.** This chapter shall modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but shall not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b)."

SECTION 2. Chapter 517D, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 19, 2009.)

A Bill for an Act Relating to High Technology.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 206M-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The development corporation may provide grants [as follows:

(1) Up to the lesser of:

(A) ~~Fifty per cent of the federal small business innovation research phase I award or contract;~~

(B) ~~\$25,000 to each business in Hawaii that receives a federal small business innovation research phase I award or contract from any participating federal agency;~~

(2) ~~Up to \$25,000 to each business in Hawaii that receives a federal small business technology transfer program award or contract from any participating federal agency; or~~

(3) ~~Up to \$3,000 to each business in Hawaii that applies for a small business innovation research federal grant or small business technology transfer program federal grant,] to any business in Hawaii that:~~

(1) Receives a federal small business innovation research phase I award or contract from any participating federal agency, up to fifty per cent of the amount of the federal award or contract;

(2) Receives a federal small business technology transfer program award or contract from any participating federal agency, up to fifty per cent of the amount of the federal award or contract; or

(3) Applies for a small business innovation research federal grant or a small business technology transfer program federal grant, in an amount not to exceed \$3,000,

subject to the availability of funds.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 19, 2009.)

A Bill for an Act Relating to Science and Technology.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the lucrative jobs of today are more and more found within the diverse fields of science and high technology. Economies that ground themselves in science and high technology have found success, armed with a workforce that is well-educated, benefiting from work products that provide for a better lifestyle, and able to compete on a national if not international scale.

It is important that first steps be taken by stimulating the interest and achievement of Hawaii's students in this arena, and during the 2007 legislative

session, various related programs were established and expanded. However, Hawaii lacks an overall, statewide plan to progress in science and high technology beyond the schools.

The purpose of this Act is to develop a Hawaii state science and technology plan.

SECTION 2. Hawaii EPSCoR, with the assistance of the high technology development corporation, shall develop a Hawaii state science and technology plan. The Hawaii state science and technology plan shall be statewide and shall include:

- (1) An evaluation of the effectiveness of past and current science and high technology legislation, including legislation relating to industry development, incentives, oversight, and sustainability;
- (2) A plan for the direction of Hawaii's science and high technology sector, including:
  - (A) A list of goals established for the science and high technology sector in the state;
  - (B) A plan to reach the established goals; and
  - (C) A timeline for implementation and completion;
- (3) Criteria to measure the growth of emerging growth industries in the science and high technology sector;
- (4) Guidelines for future science and high technology legislation to assist the legislature in maintaining an overall framework to guide the development of science and high technology in the state; and
- (5) Recommendations or proposals for science and high technology legislation to meet the goals established in the plan.

SECTION 3. (a) The Hawaii state science and technology plan shall incorporate Hawaii EPSCoR planning efforts, as well as all other prior reports relating to the University of Hawaii's and the State's efforts to grow and develop a high technology industry and promote technology-based economic development in the state.

(b) The plan shall reflect collaboration among the University of Hawaii and its research institutes, state and county high technology development boards, and entities conducting private, non-profit technology-based economic research activities.

- (c) The following shall be consulted in the development of the plan:
  - (1) The director of business, economic development, and tourism, or the director's designee;
  - (2) The superintendent of education, or the superintendent's designee;
  - (3) The chairperson of the board of directors of the high technology development corporation, or the chairperson's designee;
  - (4) The University of Hawaii;
  - (5) The economic development boards of all the islands;
  - (6) The Hawaii Science and Technology Council;
  - (7) Members of the Hawaii house of representatives and senate; and
  - (8) Members of the private and public sector and national and international, research and technology-based economic development organizations.

(d) Hawaii EPSCoR through the office of the vice president of research of the University of Hawaii shall provide administrative, professional, technical, and clerical staff support.

(e) Non-general funds may be used to develop the plan; provided that chapter 103D, Hawaii Revised Statutes, shall apply to the procurement and selection of vendors and contractors.

SECTION 4. Hawaii EPSCoR shall submit the Hawaii state science and technology plan to the legislature no later than twenty days prior to the convening of the regular session of 2011. Every five years thereafter, Hawaii EPSCoR shall submit to the legislature no later than twenty days prior to the convening of the regular session of the legislature, an updated report that reassesses the plan and includes metrics and recommendations.

SECTION 5. This Act shall take effect on July 1, 2009.

(Approved June 19, 2009.)

## ACT 138

S.B. NO. 309

A Bill for an Act Relating to Workers' Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 386-181, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Sheriffs’ chaplain” means a member of an authorized chaplaincy program of the department of public safety who performs functions similar to a police chaplain in a voluntary and unpaid capacity for the sheriff division.”

2. By amending subsections (b) and (c) to read:

“(b) If a member of a public board, a reserve police officer, a police chaplain, sheriffs’ chaplain, a volunteer firefighter, a volunteer boating enforcement officer, or a volunteer conservation and resources enforcement officer is injured while performing services for the board, county police department, county fire department, department of public safety, harbors division of the department of transportation, or division of conservation and resources enforcement of the department of land and natural resources, under the conditions specified in section 386-3, the person or the person’s dependents shall be entitled to all compensation in the manner provided by this chapter and, for the purposes of this chapter, the person shall, in every case, be deemed to have earned wages for the services.

(c) In computing the average weekly wages of an injured public board member, reserve police officer, police chaplain, sheriffs’ chaplain, volunteer firefighter, volunteer boating enforcement officer, or volunteer conservation and resources enforcement officer:

(1) The person’s income from self-employment shall be considered wages;

(2) The person shall, in no event, be considered to have earned less than the minimum hourly wage prescribed in chapter 387;

(3) Wages of other employees in comparable employment shall not be considered;

~~[(4) Section 386-51(5) shall not apply;] and~~

~~[(5)] (4) All provisions of section 386-51 not inconsistent with this section shall apply[-]; provided that section 386-51(5) shall not apply.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 2009.)

ACT 139

H.B. NO. 300

A Bill for an Act Relating to the Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 2009.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing", or "MOF", means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. The letter symbols, where used, shall have the following meanings:

- A General funds
- B Special funds
- C General obligation bond funds
- N Other federal funds
- W Revolving funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

**PART II. PROGRAM APPROPRIATIONS**

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2009, and ending June 30, 2011. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR	FISCAL YEAR
				M O F	M O F
				2009-2010	2010-2011
<b>The Judicial System</b>					
1.	JUD101	- COURTS OF APPEAL			
	OPERATING		JUD	79.00 *	79.00 *
			JUD	7,263,297 A	7,260,041 A
				243,261 W	243,261 W
2.	JUD310	- FIRST JUDICIAL CIRCUIT			
	OPERATING		JUD	1,057.50 *	1,057.50 *
				76,609,271 A	76,668,648 A
				40.00 *	40.00 *
			JUD	3,777,131 B	3,784,971 B

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
3.	JUD320 -	SECOND JUDICIAL CIRCUIT			
	OPERATING		JUD	205.00* 15,462,417 A	205.00* 15,460,014 A
4.	JUD330 -	THIRD JUDICIAL CIRCUIT			
	OPERATING		JUD	223.00* 18,679,648 A	223.00* 18,676,725 A
5.	JUD350 -	FIFTH JUDICIAL CIRCUIT			
	OPERATING		JUD	97.00* 7,246,822 A	97.00* 7,245,750 A
6.	JUD501 -	JUDICIAL SELECTION COMMISSION			
	OPERATING		JUD	1.00* 99,292 A	1.00* 99,292 A
7.	JUD601 -	ADMINISTRATION			
	OPERATING		JUD	213.00* 13,639,253 A	213.00* 13,589,530 A
			JUD	1.00* 8,396,900 B	1.00* 6,930,290 B
			JUD	100,000 W	100,000 W
	INVESTMENT CAPITAL		JUD	9,775,000 C	C

## PART III. PROGRAM PROVISIONS

SECTION 4. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; and provided further that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 5. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; and provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in instances where programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 6. Provided that the Judiciary shall prepare a report that shall include but not be limited to the following information:

- (1) The amount collected for bench warrant assessments on traffic cases for the current fiscal year and the previous two fiscal years;
- (2) The number of warrants served for the current fiscal year and the previous two fiscal years;
- (3) The number of warrants outstanding for the current fiscal year and the previous two fiscal years;
- (4) The status of the eBench Warrant Pilot Program;

(5) Determination of success of the program and whether to continue the pilot program;  
and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 7. Provided that any savings or unrequired balances arising as a result of labor cost reductions pursuant to a collective bargaining agreement from appropriated general funds shall lapse to the general fund.

#### PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 8. The sum of \$9,775,000 appropriated or authorized in Part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount after each cost element and the total funding for each project listed in this Part is in thousands of dollars.

##### CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
The Judicial System					
JUD601 - ADMINISTRATION					
1.		KAPOLEI JUDICIARY COMPLEX, OAHU			
		PLANS AND DESIGN FOR A NEW ADMINISTRATIVE SERVICES OFFICE BUILDING AT KAPOLEI, OAHU.			
		PLANS		225	
		DESIGN		5	
		TOTAL FUNDING	JUD	230 C	C
2.		KAUIKEAOULI HALE ELEVATOR SYSTEMS UPGRADE AND MODERNIZATION, OAHU			
		DESIGN AND CONSTRUCTION FOR UPGRADE AND MODERNIZATION OF THE ELEVATORS AT KAUIKEAOULI HALE, OAHU.			
		DESIGN		245	
		CONSTRUCTION		3,750	
		TOTAL FUNDING	JUD	3,995 C	C
3.		KONA JUDICIARY COMPLEX, HAWAII			
		PLANS AND LAND ACQUISITION FOR A NEW JUDICIARY COMPLEX FOR KONA, HAWAII.			
		PLANS		500	
		LAND		50	
		TOTAL FUNDING	JUD	550 C	C

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
4.		LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMODELING AND UPGRADING OF JUDICIARY BUILDINGS, STATEWIDE.			
		PLANS		250	
		DESIGN		2,250	
		CONSTRUCTION		2,250	
		EQUIPMENT		250	
		TOTAL FUNDING JUD		5,000 C	C

**PART V. ISSUANCE OF BONDS**

SECTION 9. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$9,775,000.

SECTION 10. Any law to the contrary notwithstanding, the appropriations under Act 169, Session Laws of Hawaii 2007, section 15, as amended and renumbered by Act 102, Session Laws of Hawaii 2008, section 4, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
JUD601-4	\$ 50,000 C
JUD601-4.01	1,020,000 C"

**PART VI. SPECIAL PROVISIONS**

SECTION 11. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized in Part II and listed in Part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 2009-2010 and fiscal year 2010-2011, which are unencumbered as of June 30, 2012, shall lapse as of that date.

SECTION 12. The judiciary is authorized to delegate to other state or county agencies the planning, acquiring of land, designing, constructing, and equipping of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 13. All unrequired balances in the general obligation bond fund, after the objectives of Part II appropriations for capital improvements program purposes listed as projects in part IV of this Act have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 14. If the amount allocated from the general obligation bond fund for a capital improvement project listed in part IV of this Act is insufficient,



the chief justice may make supplemental allotments from the project adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project.

SECTION 15. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in Part IV of this Act, the chief justice may authorize such reduction of project scope.

SECTION 16. The chief justice shall determine when and the manner in which the authorized capital improvement projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in Part V of this Act.

SECTION 17. Any law or any provision of law to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future Act that has not lapsed; provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

## PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 18. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 19. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next regular session.

SECTION 20. This Act shall take effect on July 1, 2009.

(Approved June 22, 2009.)

## ACT 140

H.B. NO. 900

A Bill for an Act Relating to the Budget of the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs and this Act shall be known and may be cited as the "Office of Hawaiian Affairs Appropriations Act of 2009."

SECTION 2. Unless otherwise clear from the context, as used in this Act:

"Program ID" means the unique identifier of the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

"Means of financing," or "MOF," means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

A: General Funds

T: Trust Funds

"Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 2009 and ending June 30, 2011. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M	FISCAL M
				YEAR O	YEAR O
				2009-2010 F	2010-2011 F
Hawaiian Affairs					
1.	OHA150 - OFFICE OF THE TRUSTEES				
	OPERATING		OHA	.63 * 29,935 A	.63 * 29,935 A
			OHA	4.37 * 277,187 T	4.37 * 277,187 T
2.	OHA160 - ADMINISTRATION				
	OPERATING		OHA	7.60 * 808,657 A	7.60 * 808,657 A
			OHA	32.40 * 2,945,528 T	32.40 * 2,945,528 T
3.	OHA175 - BENEFICIARY ADVOCACY				
	OPERATING		OHA	2.86 * 1,631,067 A	2.86 * 1,631,067 A
			OHA	14.14 * 2,588,132 T	14.14 * 2,588,132 T

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$381,020 in general funds and \$381,020 in trust funds for fiscal year 2009-2010 and the sum of \$381,020 in general funds and \$381,020 in trust funds for fiscal year 2010-2011 shall provide for social services to office of Hawaiian affairs beneficiaries to include information and referral services, case management and counseling, establishment of individual development accounts, financial literacy, and financial assistance. Referral services

include those relating to education assistance, employment and income security, individual and family care, health needs, housing, legal services, genealogy research, business assistance, and general information; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 6. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$596,668 in general funds and \$596,668 in trust funds for fiscal year 2009-2010 and the sum of \$615,570 in general funds and \$615,570 in trust funds for fiscal year 2010-2011 shall provide for educational enrichment programs for native Hawaiian children in grades K through 12 throughout the State. Program activities are to be designed to optimize learning for Hawaiian students and are intended to develop a stronger interest in learning, connect learning and education to one's Hawaiian identity, and explore possible educational, career, and academic goals the students may not have considered; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 7. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$491,981 in general funds and \$491,981 in trust funds for fiscal year 2009-2010 and the sum of \$473,080 in general funds and \$473,080 in trust funds for fiscal year 2010-2011 shall provide legal services and legal representation to office of Hawaiian affairs beneficiaries for: the assertion and defense of quiet title action assistance with ahupua'a and kuleana tenant rights, including rights of access and rights to water; land title assistance, including review of title and genealogy; preservation of traditional and customary practices; protection of culturally significant places; and preservation of native Hawaiian land trust entitlements; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 8. Provided that of the general fund appropriation for the office of Hawaiian affairs (OHA 175), the sum of \$87,768 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$87,768 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended to establish the Achieving the Dream Initiative for Native Hawaiian students located at the Hawaii Community College; provided further that the funds in fiscal year 2009-2010 and fiscal year 2010-2011 shall be expended to fund three (3.00 FTE) positions; provided further that these funds shall not be expended for any other purpose; provided further that no funds shall be expended unless matched on a 1:1 basis by a trust fund expenditure by the office of Hawaiian affairs; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 9. Provided that of the general fund appropriation for the office of Hawaiian affairs (OHA 175), the sum of \$70,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$70,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended to establish a research and training program for native Hawaiian students of the Hawaii Institute of Marine Biology; provided further that these funds shall not be expended for any other purpose; provided further that no funds shall be expended unless matched on a 1:1 basis by a trust fund expenditure by the office

of Hawaiian affairs; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 10. Provided that whenever the need arises, the board of trustees of the office of Hawaiian affairs or their designee is authorized to transfer sufficient funds and positions between programs for operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report of these fund transfers shall be made to the legislature no later than thirty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 11. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 12. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the board of trustees of the office of Hawaiian affairs is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 13. This Act shall take effect on July 1, 2009.

(Approved June 22, 2009.)

## ACT 141

S.B. NO. 1268

A Bill for an Act Relating to Affordable Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 46-15.1, Hawaii Revised Statutes, is amended to read as follows:

**“§46-15.1 Housing; county powers.** (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low- and moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section 201H-36; and provided further that section 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;

- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or other person in developing and constructing new housing and rehabilitating existing housing for elders of low- and moderate-income, other persons of low- and moderate-income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low- and moderate-income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States to induce those officials to commit to insure or to insure mortgages under the National Housing Act, as amended;
- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent, of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.

(b) Each county shall issue affordable housing credits to the department of Hawaiian home lands with respect to existing and future Hawaiian home lands projects upon a request for such credits by the department of Hawaiian home lands. The credits shall be transferable and shall be issued on a one-unit for one-unit basis. The credits may be applied county-wide within the same county in which the credits were earned to satisfy affordable housing obligations imposed by the county on market priced residential and non-residential developments.

~~[(b)]~~ (c) Any law to the contrary notwithstanding, any county may:

- (1) Authorize and issue bonds under chapter 47 and chapter 49 to provide moneys to carry out the purposes of this section or section 46-15.2, including the satisfaction of any guarantees made by the county pursuant to this section;
- (2) Appropriate moneys of the county to carry out the purposes of this section;
- (3) Obtain insurance and guarantees from the State or the United States, or subsidies from either;
- (4) Designate, after holding a public hearing on the matter and with the approval of the respective council, any lands owned by it for the purposes of this section;
- (5) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low and moderate income; and
- (6) Adopt rules pursuant to chapter 91 as are necessary to carry out the purposes of this section.

[(e)] (d) The provisions of this section shall be construed liberally so as to effectuate the purpose of this section in facilitating the development, construction, and provision of low- and moderate-income housing by the various counties.

[(d)] (e) For purposes of this section, "low and moderate income housing" means any housing project that meets the definition of "low- and moderate-income housing project" in section 39A-281."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009; provided that on June 30, 2015, this Act shall be repealed and section 46-15.1, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 22, 2009.)

## ACT 142

S.B. NO. 440

A Bill for an Act Relating to Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2007, the governor convened a statewide task force comprised of representatives of the State, counties, business, labor, developers, architects, nonprofit providers of services, and the legislature to recommend solutions to address barriers to affordable housing, pursuant to the program of the United States Department of Housing and Urban Development, entitled National Call to Action for Affordable Housing Through Regulatory Reform.

The legislature finds that the need for more affordable housing in Hawaii affects all segments of society. Nonetheless, there has been an apparent problem with the counties in their delay to affirmatively accept or reject public infrastructure improvements that have been developed as part of a housing project.

The purpose of this Act is to require counties to accept or reject a dedication of infrastructure request for affordable housing within a specified time and under certain conditions, or the infrastructure is deemed dedicated.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§46- Infrastructure dedication; affordable housing.** (a) Infrastructure for affordable housing shall be deemed dedicated to the county if the county does not accept or reject the request for dedication of infrastructure within ninety days of the filing of the dedication request; provided that:

- (1) Applicable meter and connection fees and utility costs relating to the dedicated infrastructure have been paid;
  - (2) The dedicated infrastructure conforms to applicable county standards in effect at the time of construction; and
  - (3) The completion of the improvements comprising a dedicated infrastructure is granted approval by the county.
- (b) For the purposes of this section:

“Affordable housing” means housing that is affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.

“Infrastructure” includes water, drainage, sewer, waste disposal and waste treatment systems, road, and street lighting that connect to the infrastructure of the county.”

SECTION 3. This Act shall apply to any affordable housing project that is constructed or is in the process of construction as of the effective date of this Act, without regard to whether there has been a request for dedication of infrastructure by the effective date of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 22, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 143**

H.B. NO. 1045

A Bill for an Act Relating to the Hawaii Housing Finance and Development Corporation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 201H, part II, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201H- Authority to modify and amend development agreements with eligible developers.** The corporation is authorized to amend, delete, restate, and otherwise modify the terms, conditions, plans, specifications, and all other matters relating, directly or indirectly, to any housing project that was previously approved by the corporation, including the terms, covenants, and conditions of any development agreement for a housing project between the corporation and an eligible developer.”

SECTION 2. Section 201H-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; ~~and~~
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs[-]; ~~and~~
- (5) Notwithstanding any law to the contrary, establish and collect fees for administrative expenses incurred by the corporation to process

applications for loans, grants, services, and real estate documents related to the corporation's functions under this chapter."

SECTION 3. Section 201H-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The corporation may:

- (1) Obtain the aid and cooperation of governmental agencies in the planning, construction, and operation of [~~public~~] housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;
- (2) Arrange or enter into agreements with any governmental agency for the acquisition of property, options, or property rights or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property, services, parks, sewage, water, and other facilities in connection with housing projects, or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;
- (3) Procure insurance or guarantees from any governmental agency for the payment of any debts or parts thereof incurred by the corporation, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to any state or county agency, if the agency is authorized to accept payments, as the corporation deems consistent with the maintenance of the character of housing projects or the purposes of this chapter."

2. By amending subsection (c) to read:

"(c) Any county in which a [~~public~~] housing project is located or is about to be located may make donations or advances to the corporation in sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2009.

(Approved June 22, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 144**

**S.B. NO. 1069**

A Bill for an Act Relating to the Hawaii Community Development Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2006, the legislature enacted Act 317, Session Laws of Hawaii 2006, that, in part, prohibits the Hawaii community development authority from selling or assigning the fee simple interest in any lands in the Kakaako community development district, except for certain specified uses or



reasons. Act 317 also prohibits the approval of any plan or proposal for any residential development in the Kakaako makai area of the Kakaako community development district.

In that same year, the legislature also adopted House Concurrent Resolution No. 30, S.D. 1, urging the authority to immediately rescind both its request for proposals and any contract or agreement awarded, or commitment made, to Alexander & Baldwin Properties, Inc., for the development of Kakaako makai. These measures were adopted because of the public's strong opposition to the project submitted by Alexander & Baldwin. Furthermore, the concurrent resolution urged the authority to immediately convene a working group of interested stakeholders to meaningfully participate in the development, acceptance, and implementation of any future plans for the development of Kakaako makai.

The purpose of this Act is to ensure that the working group meaningfully participates with the authority's development, acceptance, and implementation of any future plans for the development of the Kakaako makai area of the Kakaako community development district.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§206E- Kakaako makai; plan.** In developing, accepting, and implementing any plans for the development of the Kakaako makai area within the Kakaako community development district, the authority shall collaborate with and consider the recommendations of the Kakaako makai community planning advisory council, established pursuant to house concurrent resolution no. 30, regular session of 2006, and organized in 2007. Any transfer of property in the Kakaako makai area within the Kakaako community development district to any state or county agency shall be upon the condition that the agency shall be required to collaborate with and consider the recommendations of the Kakaako makai community planning advisory council in the development, acceptance, and implementation of any plan for the transferred property. As used in this section, “Kakaako makai” means the area within the Kakaako community development district that is from the east side of Kewalo basin at the ewa wall of Ala Moana Park, to Forrest Avenue, and from Ala Moana Boulevard to the ocean.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 23, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 145

H.B. NO. 643

A Bill for an Act Relating to Contractors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**“§444-17 Revocation, suspension, and renewal of licenses.** In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including ~~but not limited to the following~~:

- (1) Any dishonest, fraudulent, or deceitful act as a contractor that causes substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, that is prejudicial to a person entitled to have the construction project or operation completed in accordance with those plans and specifications;
- (6) Wilful violation of any law of the State, or any county, relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of those records by the board;
- (8) When the licensee being a partnership or a joint venture permits any partner, member, or employee of the partnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for a licensee, the licensee's employer, or other

- person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
  - (17) Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
  - (18) Performing service on a residential or commercial air conditioner~~[-]~~ ~~utilizing~~ using CFCs~~[-]~~ without using refrigerant recovery and recycling equipment;
  - (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriters Laboratories, Incorporated;
  - (20) Violating chapter 342C; ~~[and]~~
  - (21) Failure to pay delinquent taxes, interest, and penalties assessed under chapter 237 that relate to the business of contracting, or to comply with the terms of a conditional payment plan with the department of taxation for the payment of such delinquent taxes, interest, and penalties~~[-]; and~~
  - (22) Knowingly or intentionally employing a person to perform work under a contract subject to chapter 104 who is not eligible to work in the United States under federal law."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 23, 2009.)

## ACT 146

H.B. NO. 899

A Bill for an Act Relating to the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1994, the legislature passed Act 283, Session Laws of Hawaii 1994, to improve the administration of the office of Hawaiian affairs by giving the office of Hawaiian affairs the authority to issue revenue bonds secured by the moneys received by the office of Hawaiian affairs from the twenty per cent share of the revenue from the public land trust. Act 283 accomplished this purpose through amendments to chapter 10, Hawaii Revised Statutes, that primarily added a new part entitled "Revenue Bonds."

Section 1 of Act 283 noted that the office of Hawaiian affairs was established as a body corporate and as a separate entity independent of the executive branch. Further, section 1 noted that the 1978 constitutional convention intended that the office of Hawaiian affairs have maximum control over its budget, assets, and personnel. The Act also enabled the office of Hawaiian affairs to maximize the trust funds without eroding the trust corpus by providing another alternative to

leverage the trust funds. Act 283 required that the revenue bonds authorized by the office of Hawaiian affairs be issued by, and on behalf of, the agency's board of trustees and not by, or on behalf of, the State. The Act provided that these revenue bonds would be excluded from the State's debt ceiling and that issuance of office of Hawaiian affairs revenue bonds would have no effect on the State's power to issue general obligation bonds or the funded debt of any political subdivision under article VII, section 12, of the Hawaii Constitution.

The legislature finds that although the office of Hawaiian affairs has never issued revenue bonds, the Hawaii and national economies are now creating a renewed impetus for the office of Hawaiian affairs to seek alternative sources of funding for its projects. In addition, the legislature finds that the revenue bond provisions of chapter 10, Hawaii Revised Statutes, which have not been amended since their enactment, need updating to better reflect current government bond practices and to ensure that the office of Hawaiian affairs has maximum independence in issuing bonds.

The purpose of this Act is to clarify and strengthen the office of Hawaiian affairs' bond authority. The Act contains, among other things, provisions clarifying the ability of the office of Hawaiian affairs to meet the requirement that an office project be self-supporting by using office of Hawaiian affairs revenues that consist of rates, rentals, fees, and charges for the use and services of a public undertaking, improvement, or system, or user taxes.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§10- Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates that vary from time to time or with a right of holders to tender the revenue bonds for purchase, or both, the board may contract for a support facility or facilities and remarketing arrangements as are required to market the revenue bonds to the greatest advantage of the board and the office upon such terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the board under the contract or agreement on an annual basis shall be payable from the revenue of the office; provided further that any obligation issued or arising pursuant to the terms of the contract or agreement in the form of revenue bonds, notes, or other evidences of indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility."

SECTION 3. Section 10-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Revenues of the office" or "office's revenue" means all rates, rentals, fees and charges, and user taxes, received by the office of Hawaiian affairs, and all money and revenue derived from the operations of the office of Hawaiian affairs, other than:

- (1) General appropriations; and

- (2) Funds, the terms of which preclude their being used for payment of the costs of construction or costs of maintenance of an office project or the payment of principal or interest of revenue bonds.

For purposes of the issuance of revenue bonds, the office of Hawaiian affairs or any office project or projects shall constitute a public undertaking, improvement, or system."

SECTION 4. Section 10-4, Hawaii Revised Statutes, is amended to read as follows:

**"§10-4 Office of Hawaiian affairs; established; general powers.** There shall be an office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch. The office, under the direction of the board of trustees, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose;
- (3) To determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs;
- (4) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers;
- (6) To issue revenue bonds pursuant to this chapter ~~[in such principal amounts as may be authorized from time to time by law]~~ to finance the cost of an office project ~~[as authorized by law]~~ and to provide for the security thereof ~~[as permitted by this chapter]~~, in the manner and pursuant to the procedure prescribed in part II;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of an office project, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (8) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other

sum due and payable by the qualified person to the office pursuant to the project agreement; and

- (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law."

SECTION 5. Section 10-22, Hawaii Revised Statutes, is amended to read as follows:

**"[§10-22] Powers of the board.** In addition to the powers which it now possesses, the board shall have power to:

- (1) Prescribe and collect rents, fees, and charges for the use of or services furnished by any office project or the facilities thereof;
- (2) Issue revenue bonds under this chapter, in such principal amounts as may be authorized by the legislature from time to time, to finance in whole or in part the cost of construction or maintenance, or both, of any office project~~;~~, including reserves therefor;
- (3) Pledge to the punctual payment of such revenue bonds and interest thereon, the revenue of the office project or projects for the construction or maintenance of which the bonds have been issued, or the ~~[office's revenue]~~ revenues of the office, or both, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (4) Advance such moneys of the office, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this part, and to take any other action necessary or proper for carrying into execution and administering this part, including providing for the full ~~[utilization]~~ use of office projects in every way conducive to the furtherance of any or all purposes of the office."

SECTION 6. Section 10-25, Hawaii Revised Statutes, is amended to read as follows:

**"[§10-25] Revenue bonds.** (a) Revenue bonds shall be issued in the name of the board, may be in one or more series, may be in the denomination or denominations, may bear ~~[such]~~ the date or dates, may mature at ~~[such]~~ the time or times not exceeding fifty years from their respective dates, may ~~be~~ bear interest at the rate or rates payable at ~~[such]~~ the time or times at the place or places within or without the State, may carry ~~[such]~~ the registration privileges as to principal alone or as to both principal and interest, may be subject to ~~[such]~~ the terms or redemption with or without premium, may be executed in ~~[such]~~ the manner, may contain ~~[such]~~ the terms, covenants, and conditions, and may be in such form~~[- either coupon or registered with privilege of exchange from one form to another]~~, as the resolution authorizing the issuance of the bonds, or subsequent resolutions may provide.

~~[Revenue bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, to the State or any political subdivision, agency, instrumentality, or corporation thereof, or to any person or group of persons offering to purchase all or a major portion of a particular issue or series. Unless sold at private sale as herein provided, revenue bonds shall be sold at public sale after publication of a notice of such sale at least once, the date of publication to be at least five days prior to the date of the sale, and the publication shall be made in a newspaper published and of general circulation in the State and in a financial newspaper published in either of the cities of New~~

York, Chicago, or San Francisco. The revenue bonds shall be sold for not less than ninety-eight per cent of the principal amount thereof. Pending the preparation of definitive revenue bonds, interim receipts or temporary bonds may be issued and delivered to the purchasers of the bonds in such form and containing such provisions as the board may determine. Revenue bonds, interim receipts, and temporary bonds shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code, chapter 490.

It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees' retirement system of the State or any instrumentality of the State or any insurance company or building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of this State, or for any personal representative, guardian, trustee, or other fiduciary, or any educational, charitable, or eleemosynary institution, to invest their funds, and moneys in their custody in revenue bonds issued under this part.]

(b) The board may acquire policies of insurance and enter into banking arrangements upon terms and conditions as the board may deem necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interest of the office, including contracting for a support facility or facilities as permitted in section 10- , and contracting for interest rate swaps, swaptions, interest rate floors, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread, or similar risk, or to reduce the cost of borrowing when used in conjunction with revenue bonds issued pursuant to this chapter.

(c) The board may make arrangements as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued pursuant to this chapter, including arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments deemed required for the issuance and sale of revenue bonds and retaining financial, accounting, and legal consultants, all upon terms and conditions as the board deems advisable and in the best interest of the State and the office. The board may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the United States, or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State, or to any board, agency, instrumentality, public corporation, or other governmental organization of the State or of any political subdivision thereof.

The sale of the revenue bonds by the board by negotiation shall be at a price or prices, and upon terms and conditions, and the revenue bonds shall bear interest at a rate or rates or varying rates determined from time to time, in the manner as the board shall approve.

The sale of the revenue bonds by the board at competitive sale shall be at a price or prices and upon terms and conditions, and the revenue bonds shall bear interest at a rate or rates or varying rates determined from time to time in the manner as specified by the successful bidder. The revenue bonds shall be sold in the manner provided in section 39-55.

(d) The board may delegate the responsibility for the sale and the fixing of the terms and details of revenue bonds and such other determinations or actions as may be provided by resolution of the board, to the chairperson of the board, the administrator, or another designated officer.

(e) all public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and

all other persons and fiduciaries in the state who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in revenue bonds issued under this chapter. The purpose of this subsection is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including, without prejudice to the generality of the foregoing, sinking, insurance, investment, retirement, compensation, pension, or trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this chapter."

SECTION 7. Section 10-28, Hawaii Revised Statutes, is amended to read as follows:

**"[H§10-28] Validity of bonds.** Revenue bonds issued under this part shall bear the manual signatures of the chairperson of the board and the administrator, ~~[either of which signatures may be a lithographed or engraved facsimile of the signature provided that at least one of the signatures is a manual signature,]~~ and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. ~~[The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the chairperson of the board and the administrator.]~~ If the board designates a registrar other than itself for the revenue bonds, the resolution authorizing the revenue bonds may provide that none of the revenue bonds shall be valid or obligatory for any purpose unless authenticated by the registrar. If the resolution so provides, then all signatures of the board upon the revenue bonds may be facsimiles of the signatures, and the revenue bonds shall be valid and obligatory only if authenticated by the manual signature of an authorized officer or signatory of the registrar. Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the office project or projects for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance."

SECTION 8. Section 10-30, Hawaii Revised Statutes, is amended to read as follows:

**"[H§10-30] Payment and security of revenue bonds; revenue bonds not a debt of the State.** Revenue bonds issued under this part shall be payable ~~[solely]~~ from and secured solely by the revenues of the office project or projects or revenues of the office pledged to the payment thereof, or both, and ~~[such]~~ those revenues shall be applied to ~~[such]~~ the payment in accordance with the provisions of this part and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or the making of any appropriation to pay ~~[such]~~ the revenue bonds, or interest thereon. Each revenue bond shall recite in substance that the revenue bond, including interest thereon, is payable solely from and secured ~~[solely]~~ by the revenue pledged to the payment thereof, and that the bond does not constitute ~~[an]~~



a general or moral obligation or indebtedness of the State within the meaning of any [limitation of] law."

SECTION 9. Section 10-31, Hawaii Revised Statutes, is amended to read as follows:

**"[H§10-31] Office of Hawaiian affairs projects to be self-supporting.** The board shall impose and collect rates, rents, fees, and charges for the use or enjoyment and services of the facilities of each office project, and shall revise such rates, rents, fees, and charges ~~[from time to time]~~, whenever necessary, or direct all or any portion of the revenues of the office, so that ~~[all office projects shall be self-supporting. The rates, rents, fees, and charges prescribed]~~ in the aggregate, the revenues of the office project and the revenues of the office shall ~~[be such as will]~~ produce revenue at least sufficient to:

- (1) Pay the cost of maintenance of the office project or projects, including reserves therefor;
- (2) Pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) Reimburse the general fund of the State for any bond requirements on general obligation bonds issued for an office project or projects to the extent required by law; and
- (4) Carry out all covenants and provisions of the resolution or resolutions authorizing the issuance of revenue bonds.

Neither this section nor any other section of this part shall preclude the making of appropriations to the board, the acceptance of gifts by the board, or the use of revenues of the office or other funds derived from the sale of stocks, bonds, or other assets in the possession of the board to pay all or part of the costs of construction, of maintenance, or both, of any or all office projects.

All moneys received pursuant to this section shall be administered as trust funds, as provided by this chapter, and in separate accounts designated for each office project."

SECTION 10. Any law to the contrary notwithstanding, nothing in this Act shall be construed to prohibit or otherwise limit the ability of the office of Hawaiian affairs to pledge to the punctual payment of revenue bonds issued under part II of chapter 10, Hawaii Revised Statutes, revenues of the office of Hawaiian affairs that are, or are deemed to be, income and proceeds from the public land trust under article XII, sections 4 and 6, of the Hawaii Constitution.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 24, 2009.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Passenger Facility Charge Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 261-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“§261-5.5 Passenger facility charge special fund.** (a) There is established in the state treasury the passenger facility charge special fund, into which shall be deposited all proceeds from the passenger facility charge.

~~[(b) Moneys in the passenger facility charge special fund shall be used for airport capital improvement program projects approved by the legislature.~~

~~(e)]~~ (b) The director of transportation shall administer the passenger facility charge special fund.

(c) The passenger facility charge shall be a charge for the use and services of an undertaking for the purposes and within the meaning of section 39-61(a) (1) and (3).

(d) All moneys paid into the passenger facility charge special fund shall be appropriated, applied, or expended by the department for airport capital improvement program projects approved by the legislature and as permitted under the Aviation Safety and Capacity Expansion Act of 1990, codified as 49 United States Code Section 40117, as amended from time to time.

(e) Any resolution or certificate authorizing any issue of bonds relating to the use of the passenger facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the passenger facility charge special fund and require the transfer of the passenger facility charge into the other accounts to pay debt service on the related bonds.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved June 24, 2009.)

A Bill for an Act Relating to Motor Vehicle Rental Industry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 437D-3, Hawaii Revised Statutes, is amended by amending the definition of “collision damage waiver” to read as follows:

~~“[“Collision damage waiver”]~~ “Damage waiver” means any contract or contractual provision, whether separate from or a part of a rental agreement, whereby the lessor agrees, for a charge, to waive any or all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.”

SECTION 2. Section 437D-4, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§437D-4[H] Rental agreements; delivery to director.** No lessor shall offer a rental agreement or ~~[collision]~~ damage waiver unless a specimen of the rental agreement or ~~[collision]~~ damage waiver is delivered to the director prior to its use.”

SECTION 3. Section 437D-5, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§437D-5[H] Rental agreements; ~~[collision]~~ damage waivers.** (a) Each rental agreement ~~[which]~~ that contains a ~~[collision]~~ damage waiver shall disclose, at a minimum, in plain language and in at least ten-point boldface type, the following information:

- (1) That the ~~[collision]~~ damage waiver is optional;
- (2) That the ~~[collision]~~ damage waiver entails an additional charge;
- (3) The actual charge per day for the ~~[collision]~~ damage waiver;
- (4) All restrictions, conditions, and provisions in or endorsed on the ~~[collision]~~ damage waiver;
- (5) That the lessee may already be sufficiently covered and should examine the lessee's personal automobile insurance policy to determine whether it provides coverage for ~~[collision]~~ damage and the amount of the deductible;
- (6) That by entering into the rental agreement, the lessee may be liable for damage to the rental motor vehicle ~~[resulting from a collision]~~; and
- (7) The acknowledgment described in section 437D-11.

(b) The rental agreement shall not contain an unreasonable restriction, condition, or provision in or endorsed on a ~~[collision]~~ damage waiver. The ~~[collision]~~ damage waiver shall not exclude damages caused by ordinary negligence on the part of the lessee.”

SECTION 4. Section 437D-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§437D-5.5[H] Offers or sales of collision insurance by lessors or limited line motor vehicle rental company producers.** (a) The provisions in this chapter relating to or otherwise regulating the offer or sale ~~[of]~~ ~~[collision]~~ damage waivers shall apply to the offer or sale of collision insurance by lessors or limited line motor vehicle rental company producers.

(b) For purposes of this chapter, collision insurance means coverage to pay a specified amount to or on behalf of the lessee for claims by the lessor relating to loss of or damage to the rented vehicle. The definitions of collision insurance and ~~[collision]~~ damage waiver stated in this chapter shall apply only to this chapter. No definition of insurance in this chapter or in any other statute shall be deemed to include ~~[collision]~~ damage waiver as defined in this chapter.”

SECTION 5. Section 437D-7, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§437D-7[H] Rate disclosure requirements~~[-]~~; advertising.** (a) Each lessor, and each officer, employee, agency, or other representative of the lessor, who states or permits to be stated the rental cost of a rental motor vehicle in any advertisement, shall state conspicuously, in plain language and in conjunction with the advertised rental cost of the vehicle, the daily rate of the applicable ~~[col-~~

lision] damage waiver, and that the rate constitutes an additional daily charge to the lessee.

(b) When a written advertisement, including all print media, contains the statement of the rental cost of a vehicle, the disclosure required by this section shall be printed in type no less than one-third the size of the type used to print the rental cost, or twelve-point type, whichever is larger. When the video presentation of a television advertisement contains the statement of the rental cost of a vehicle, the depiction of the disclosure required by this section shall be no less than one-third the size of the depiction of the rental cost. When a radio advertisement or the audio presentation of a television advertisement contains the statement of the rental cost of the vehicle, the oral statement of the rental cost shall be immediately accompanied by an oral statement of the disclosure required by this section.

(c) Except as set forth in this section, the statement of the rental cost and the disclosure shall be equally prominent in all respects."

SECTION 6. Section 437D-8, Hawaii Revised Statutes, is amended to read as follows:

**"[§437D-8] Rate disclosure requirements; oral or written statements.** Each lessor, and each officer, employee, agent, or other representative of the lessor, who makes any oral statement, excluding telephonic communications, or written statement of the rental cost of a vehicle, shall disclose, in plain language and in conjunction with that statement, the daily rate of the applicable [collision] damage waiver and that the rate constitutes an additional daily charge to the lessee."

SECTION 7. Section 437D-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§437D-8.5 Commissions.** (a) No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling [collision] damage waivers, except as provided in subsection (b). Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2.

(b) As used in this section:

"Commission for selling [collision] damage waivers" includes any compensation, bonus, award, or remuneration that corresponds directly to the amount of sales of [collision] damage waivers. "Commission for selling [collision] damage waivers" does not include any compensation, bonus, award, or remuneration to an employee that corresponds to the overall gross receipts of a sales location, where sales of [collision] damage waivers are one of many factors contributing to overall gross receipts.

"Sales location" means any location at which the employee worked or had oversight responsibility during the applicable compensation period."

SECTION 8. Section 437D-8.6, Hawaii Revised Statutes, is amended to read as follows:

**"§437D-8.6 [Collision damage] Damage waiver statistics.** Lessors shall ~~[submit data or information to the director regarding their]~~ maintain records of the sale of [collision] damage waivers in a given year and amounts expended to repair damage to rental vehicles caused while the vehicles are subject to the [collision] damage waiver. Lessors shall maintain all records reflecting these sta-

tistics[-] for a period of three years and shall make the records available to the department of commerce and consumer affairs upon request. Neither the director, nor any other employee of the department of commerce and consumer affairs, nor any other person appointed by the director as provided by law, shall release or divulge any of the information or data required by this section, except as may be required or allowed by rules adopted pursuant to section 437D-18.”

SECTION 9. Section 437D-9, Hawaii Revised Statutes, is amended to read as follows:

**“[§437D-9] Posting requirements.** Except as provided in section 437D-17, each lessor who offers the ~~[collision]~~ damage waiver shall conspicuously display at the rental area of each rental location a notice, in plain language and printing, ~~[which] that~~ includes all of the information in section 437D-5(a)(1), (2), (5), and (6), and a statement that restrictions or conditions apply.”

SECTION 10. Section 437D-10, Hawaii Revised Statutes, is amended to read as follows:

**“[§437D-10] Pamphleting requirements.** Before the execution of a rental agreement, each lessor who offers ~~[the collision]~~ a damage waiver option to a lessee shall provide to the lessee a pamphlet, written in plain language, ~~[which] that~~ includes all of the information described in section 437D-5(a)(1) through (6). The requirements of this section shall be deemed to be satisfied if the lessor places the pamphlets prominently and conspicuously on the rental desk ~~[or]~~, countertop, or in a wall holder, where the pamphlets may be easily seen and reached by lessees and potential lessees.”

SECTION 11. Section 437D-13, Hawaii Revised Statutes, is amended to read as follows:

**“§437D-13 Notice and posting required concerning motor vehicle laws. [(a)]** Every lessor shall display at all times a sign or signs in a conspicuous place in ~~[each rental motor vehicle offered to the public, a decal,] the main rental area of all rental locations,~~ written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii’s seat belt and child passenger restraint laws and the prohibition against operating a vehicle under the influence of an intoxicant and leaving a child unattended in a motor vehicle; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, operating a vehicle under the influence of an intoxicant, and leaving a child unattended in a motor vehicle.

~~[The requirements and penalties of Hawaii’s seat belt laws and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and penalties for operating a vehicle under the influence of an intoxicant, as provided in section 291E-61, and leaving a child unattended in a motor vehicle, as provided in section 291C-121.5, shall be printed on a card which shall be placed in the glove compartment of every rental motor vehicle offered to the public.~~

(b) Except as provided in section ~~[437D-17]~~, a sign or signs written in plain language calling attention to the laws referred to in subsection (a) shall be prominently posted in the main rental area of all rental locations in a place and manner conspicuous to the public.

(c) The notices and signs required by this section shall include symbolic representations that are of common understanding and clearly recognizable to the public as conveying the required use of seat belts and child passenger restraint systems in the operation of a motor vehicle and the prohibition against operating a vehicle under the influence of an intoxicant.

(d) The director shall prescribe the form of the notices and signs required by this section.]”

SECTION 12. Section 437D-15, Hawaii Revised Statutes, is amended to read as follows:

**“§437D-15 Unfair trade practices.** Each lessor, and each officer, employee, agent, and other representative thereof, is prohibited from engaging in any practice constituting a violation of chapter 480. The following shall be per se violations of section 480-2:

- (1) The making of any material statement that has the tendency or capacity to mislead or deceive, either orally or in writing, in connection with the rental of, offer to rent, or advertisement to rent a vehicle;
- (2) The omission of any material statement that has the tendency or capacity to mislead or deceive, in connection with the rental of, offer to rent, or advertisement to rent a vehicle;
- (3) The making of any statement to the effect that the purchase of a ~~[collision]~~ damage waiver is mandatory;
- (4) Any violation of sections 437D-5 through 437D-14, and section 437D-17.5;
- (5) The charging by the lessor to a lessee of:
  - (A) More than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with standard practice in the ~~[automobile]~~ motor vehicle repair industry in the community, if the vehicle is repaired;
  - (B) More than the actual cash value of a vehicle if it is declared a total loss; ~~[or]~~
  - (C) More than the diminution in value of a vehicle if it is not repaired and not declared a total loss; or
  - (D) More than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with standard practice in the motor vehicle repair industry in the community if the vehicle is not repaired and is not declared a total loss but is determined by the lessor to be no longer in rentable condition; provided that the vehicle shall not be rented or leased by the lessor to any other lessee after that determination has been made by the lessor.

To the extent the lessor obtains recovery from a third party, the lessor shall not recover any amount specified in this paragraph from the lessee:

- (6) The making of any statement by the lessor to the effect that the lessee is or will be confined to remain within boundaries specified by the lessor unless payment or an agreement relating to the payment of damages has been made by the lessee;
- (7) The charging of a lessee more than a reasonable estimate of the actual income lost for loss of use of a vehicle; and
- (8) The charging of a lessee more than actual towing charges.”

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2009.

(Approved June 24, 2009.)

## ACT 149

H.B. NO. 262

A Bill for an Act Relating to Insurance Fraud.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that insurance fraud reportedly costs every household in the United States an average of \$500 per year. In Hawaii, the cost of motor vehicle insurance fraud alone was estimated in 1997 to be over \$164 annually per household. In recognition of the impact that fraud has on the cost of motor vehicle insurance, Act 251, Session Laws of Hawaii 1997 (Act 251), established an insurance fraud investigations unit and motor vehicle insurance fraud violations and penalties. Act 155, Session Laws of Hawaii 1998 (Act 155), clarified the penalties for the offense of motor vehicle insurance fraud and enhanced the powers and clarified the purpose of the insurance fraud investigations unit to combat motor vehicle insurance fraud.

Insurance fraud also increasingly affects costs within the health insurance industry. Industry health care fraud losses are estimated at three to fourteen per cent of the \$1,200,000,000,000 in annual national health care costs. This is equivalent to approximately \$36,000,000,000 to \$168,000,000,000 annually. In Hawaii, based on the conservative estimate that insurance fraud amounts to three per cent of annual Hawaii health care costs, health insurance fraud causes losses that exceed \$60,000,000 annually. In response to the growing problem of fraud in the area of health insurance, the legislature enumerated penalties for health insurance fraud offenses in Act 125, Session Laws of Hawaii 2003. However, Act 125 does not clearly assign the responsibility of investigating and prosecuting insurance fraud violations to a specific law enforcement agency.

The legislature further finds that no line of insurance is free of insurance fraud. Rather than limit administrative, civil, and criminal penalties for insurance fraud to only motor vehicle insurance, Hawaii's insurance fraud law should be expanded to include all lines of insurance to deter perpetrators of insurance fraud by demonstrating that no line of insurance is a safe haven for those who commit insurance fraud.

The purpose of this Act is to:

- (1) Establish an insurance fraud investigations branch to replace the existing insurance fraud investigations unit established in Act 251 and expanded by Act 155, and to empower the branch to investigate and prosecute insurance fraud in all lines of insurance except workers' compensation under chapter 386, Hawaii Revised Statutes;
- (2) Impose administrative, civil, and criminal penalties for offenses of insurance fraud in all covered lines of insurance and for different types of insurance fraud, including fraudulent applications and sales; and
- (3) Direct the deposit of fines and settlements resulting from successful insurance fraud prosecutions into the compliance resolution fund to help the insurance fraud investigations branch cover the cost of preventing, investigating, and prosecuting insurance fraud.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 2 to be appropriately designated and to read as follows:

**"PART . INSURANCE FRAUD**

**§431:2-A Definitions.** As used in this part:

"Branch" means the insurance fraud investigations branch of the insurance division of the department of commerce and consumer affairs.

"Insurance policy" means a contract issued by an insurer or other licensee.

"Intentionally" shall have the same meaning as under section 702-206.

"Knowingly" shall have the same meaning as under section 702-206.

"Licensee" means an entity licensed under and governed by title 24, including an insurer governed by chapter 431, a mutual benefit society governed by article 1 of chapter 432, a fraternal benefit society governed by article 2 of chapter 432, or a health maintenance organization governed by chapter 432D, and their respective agents and employees engaged in the business of the licensee.

"Person" means any individual, company, association, organization, group, partnership, business, trust, or corporation; but shall exclude:

- (1) Insurers, as defined in section 431:1-202, and other licensees, as defined in this part; and
- (2) Licensed attorneys acting in their capacity as attorneys for a claimant other than the licensed attorney.

**§431:2-B Insurance fraud investigations branch.** (a) There is established in the insurance division the insurance fraud investigations branch for the purposes set forth in this part.

(b) The branch shall:

- (1) Conduct a statewide program for the prevention of insurance fraud under title 24, including chapters 431, 432, and 432D; provided that the branch shall not have jurisdiction over workers' compensation under chapter 386;
- (2) Notwithstanding any other law to the contrary, investigate and prosecute in administrative hearings and courts of competent jurisdiction all persons involved in insurance fraud violations; and
- (3) Promote public and industry-wide education about insurance fraud.

(c) The branch may review and take appropriate action on complaints relating to insurance fraud.

(d) The commissioner shall employ or retain, by contract or otherwise, attorneys, investigators, investigator assistants, auditors, accountants, physicians, health care professionals, paralegals, consultants, experts, and other professional, technical, and support staff as necessary to promote the effective and efficient conduct of the branch's activities. The commissioner may hire these employees without regard to chapters 76 or 89.

(e) Notwithstanding any other law to the contrary, an attorney employed or retained by the branch may represent the State in any criminal, civil, or administrative proceeding to enforce all applicable state laws relating to insurance fraud, including criminal prosecutions, disciplinary actions, and actions for declaratory and injunctive relief. The attorney general may designate an attorney as a special deputy attorney general for purposes of this subsection.



(f) Investigators appointed and commissioned under this part shall have and may exercise all of the powers and authority of a police officer or of a deputy sheriff.

(g) Funding for the branch shall come from the compliance resolution fund established by section 26-9(o).

**§431:2-C Insurance fraud.** (a) A person commits the offense of insurance fraud if the person:

- (1) Intentionally or knowingly misrepresents or conceals material facts, opinions, intention, or law to obtain or attempt to obtain coverage, benefits, recovery, or compensation:
  - (A) When presenting, or causing or permitting to be presented, an application, whether written, typed, or transmitted through electronic media, for the issuance or renewal of an insurance policy or reinsurance contract;
  - (B) When presenting, or causing or permitting to be presented, false information on a claim for payment;
  - (C) When presenting, or causing or permitting to be presented, a claim for the payment of a loss;
  - (D) When presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including knowingly presenting such multiple and duplicative claims to more than one insurer;
  - (E) When presenting, or causing or permitting to be presented, any claim for payment of a health care benefit;
  - (F) When presenting, or causing or permitting to be presented, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
  - (G) When presenting, or causing or permitting to be presented, improper multiple and duplicative claims for payment of the same health care benefit;
  - (H) When presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
  - (I) When fabricating, altering, concealing, making an entry in, or destroying a document whether typed, written, or through an audio or video tape or electronic media;
  - (J) When presenting, or causing or permitting to be presented, to a person, insurer, or other licensee false, incomplete, or misleading information to obtain coverage or payment otherwise available under an insurance policy;
  - (K) When presenting, or causing or permitting to be presented, to a person or producer, information about a person's status as a licensee that induces a person or insurer to purchase an insurance policy or reinsurance contract; and
  - (L) When making, or causing or permitting to be made, any statement, either typed, written, or through audio or video tape or electronic media, or claims by the person or on behalf of a person with regard to obtaining legal recovery or benefits;
- (2) Intentionally or knowingly aids, agrees, or attempts to aid, solicit, or conspire with any person who engages in an unlawful act as defined under this section; or

- (3) Intentionally or knowingly makes, causes, or permits to be presented, any false statements or claims by any person or on behalf of any person during an official proceeding as defined by section 710-1000.
- (b) Violation of subsection (a) is a criminal offense and shall constitute:
  - (1) A class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$20,000;
  - (2) A class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$300; or
  - (3) A misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is \$300 or less.
- (c) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this part, or any other applicable statute or common law, and all such remedies shall be cumulative.

**§431:2-D Restitution.** Any person convicted under this part shall be ordered by a court to make restitution to any insurer, person, or licensee for any financial loss sustained by that insurer, person, or licensee that was caused by the act or acts for which the person was convicted.

**§431:2-E Insurance fraud; administrative penalties.** (a) In addition to or in lieu of criminal penalties under section 431:2-C(b), any person who commits insurance fraud as defined under section 431:2-C, may be subject to the administrative penalties in this section.

(b) If a person is found to have knowingly committed insurance fraud under this part, the commissioner may assess any or all of the following penalties:

- (1) Restitution to any insurer or any other person of benefits or payments fraudulently received or other damages or costs incurred;
- (2) A fine of not more than \$10,000 for each violation; and
- (3) Reimbursement of attorneys' fees and costs of the party sustaining a loss under this part; provided that the State shall be exempt from paying attorneys' fees and costs to other parties.

(c) Administrative actions brought for insurance fraud under this part shall be brought within six years after the insurance fraud is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which a violation of this part is committed.

**§431:2-F Administrative procedures.** (a) An administrative penalty may be imposed upon a judgment by a court of competent jurisdiction or upon an order by the commissioner.

(b) The commissioner shall hold a hearing in accordance with chapter 91, prior to imposing any administrative remedy.

**§431:2-G Acceptance of payment.** A provider's failure to dispute a reduced payment by an insurer shall not constitute an implied admission that a fraudulent billing was submitted.

**§431:2-H Civil cause of action for insurance fraud; exemption.** (a) An insurer or other licensee shall have a civil cause of action to recover payments or benefits from any person who has violated section 431:2-C; provided that no

recovery shall be allowed if the person has made restitution pursuant to section 431:2-D or 431:2-E(b)(1).

(b) A person, insurer, or other licensee, including an insurer's or other licensee's adjusters, bill reviewers, producers, representatives, or common-law agents shall not be subject to civil liability for providing information, including filing a report, furnishing oral, written, audiotaped, videotaped, or electronic media evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed insurance fraud to:

- (1) A court;
- (2) The commissioner;
- (3) The branch;
- (4) The National Association of Insurance Commissioners;
- (5) The National Insurance Crime Bureau;
- (6) Any federal, state, or county law enforcement or regulatory agency; or
- (7) Another insurer or other licensee,

if acting without actual malice and if the information is provided for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.

(c) Civil actions for insurance fraud under this part shall be filed within six years after the insurance fraud is discovered or should have been discovered by exercise of reasonable diligence; provided that no civil action shall be filed more than ten years after the date on which a violation of this part is committed.

**§431:2-I Mandatory reporting.** (a) Within sixty days of an insurer or other licensee's employee or agent discovering credible information indicating a violation of section 431:2-C, or as soon thereafter as practicable, the insurer or licensee shall provide to the branch information, including documents and other evidence, regarding the alleged violation of section 431:2-C. The insurance fraud investigations branch shall work with the insurer or licensee to determine what information shall be provided.

(b) Information provided pursuant to this section shall be protected from public disclosure to the extent authorized by chapter 92F and section 431:2-209; provided that the branch may release the information in an administrative or judicial proceeding to enforce this part to federal, state, or local law enforcement or regulatory authorities, the National Association of Insurance Commissioners, the National Insurance Crime Bureau, or an insurer or other licensee aggrieved by the alleged violation of section 431:2-C.

**§431:2-J Deposit into the compliance resolution fund.** All moneys that have been recovered by the department of commerce and consumer affairs as a result of prosecuting insurance fraud violations pursuant to this part, including civil fines, criminal fines, administrative fines, and settlements, but not including restitution made pursuant to section 431:2-D, 431:2-E(b)(1), or 431:2-H, shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

SECTION 3. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) (1) A person who intentionally or knowingly violates, intentionally or knowingly permits any person over whom the person has authority to violate, or intentionally or knowingly aids any person in violating any insurance rule or statute of this State or any effective order issued by the commissioner, shall be subject to any penalty or

- fine as ~~[stated in]~~ provided by this code or by the penal code of the Hawaii Revised Statutes.
- (2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance, the commissioner shall proceed against that person or certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.
  - (3) Violation of any provision of this code is punishable by a fine of not less than \$100 nor more than \$10,000 per violation, or by imprisonment for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.
  - (4) The terms "intentionally" and "knowingly" shall have the same meanings ~~[given]~~ as defined in section 702-206(1) and (2)."

SECTION 4. Section 431:2-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) When the commissioner, through the insurance fraud investigations ~~[unit,]~~ branch, is conducting an investigation of possible violations of ~~[section 431:10C-307.7,]~~ part, the commissioner shall pay to a financial institution that is served a subpoena issued under this section a fee for reimbursement of ~~[such]~~ the costs [as] that are necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, documents, or other objects designated by the subpoena. Reimbursement shall be paid at a rate not to exceed the rate set forth in section 28-2.5(d)."

SECTION 5. Section 432:2-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in this article shall exempt fraternal benefit societies from the provisions and requirements of part of article 2 of chapter 431 and of section 431:2-215."

SECTION 6. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 386-98(d)(1) relating to fraud violations and penalties; ~~[section 431:10A-131(b)(2) relating to insurance fraud; section 431:10C-307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2) relating to insurance fraud; section 432D-18.5(b)(2)]~~ section 431:2-C(b)(2) relating to insurance fraud; section 707-703 relating to negligent homicide in the second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terroristic threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault or rape in the third degree; section 707-752 relating to promoting child abuse in the third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; section

708-839.8 relating to identity theft in the third degree; section 708-839.55 relating to unauthorized possession of confidential personal information; section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; section 712-1203 relating to promoting prostitution in the second degree; section 712-1221 relating to gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 846E-9 relating to failure to comply with covered offender registration requirements; section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  - (ii) Where the instant conviction is for a class A felony—six years, eight months;
  - (iii) Where the instant conviction is for a class B felony—three years, four months; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
  - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  - (iii) Where the instant conviction is for a class B felony—six years, eight months; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  - (ii) Where the instant conviction is for a class A felony—twenty years;
  - (iii) Where the instant conviction is for a class B felony—ten years; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 7. Section 706-643, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making pay-

ment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures ~~[which]~~ that are proceeds of the wildlife revolving fund under section 183D-10.5, and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-J, the director of finance shall transmit the fines and forfeitures to ~~[that fund.]~~ the respective funds."

SECTION 8. Section 806-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for failure to comply with requirements of sections 132D-7, 132D-10, and 132D-16); section 134-24 (place to keep unloaded firearms other than pistols and revolvers); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); ~~section 431:10C-307.7]~~ section 431:2-C(b)(2) (insurance fraud); section 482D-7 (violation of fineness standards and stamping requirements); section 485A-301 (registration of securities); section 485A-401 (registration of broker-dealers); section 485A-402 (registration of agents); section 485A-403 (registration of investment advisors); section 485A-404 (registration of investment advisor representatives); section 485A-405 (registration of federal covered investment advisors); section 485A-501 (general fraud); section 485A-502 (prohibited conduct in providing investment advice); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury in the first degree); section 707-711 (assault in the second degree); section 707-713 (reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section 707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or record-

able instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); section 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or section 846E-9(b) (failure to comply with covered offender registration requirements)."

SECTION 9. Section 431:10A-131, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 431:10C-307.7, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 431:10C-307.8, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 432:1-106, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 432D-18.5, Hawaii Revised Statutes, is repealed.

SECTION 14. All rights, powers, functions, and duties of the insurance fraud investigations unit are transferred to the insurance fraud investigations branch.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

Any employee who, prior to the effective date of this Act, was exempt from civil service and who may be transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. No employee who is transferred as a

result of this Act shall suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act. The director of commerce and consumer affairs shall prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

**SECTION 15.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the insurance fraud investigations unit relating to the functions transferred to the insurance fraud investigations branch shall be transferred with the functions to which they relate.

**SECTION 16.** All rules, policies, procedures, guidelines, and other material adopted or developed by the department of commerce and consumer affairs to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of commerce and consumer affairs by this Act, shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the insurance fraud investigations unit or director of commerce and consumer affairs in those rules, policies, procedures, guidelines, and other material is amended to refer to the insurance fraud investigations branch or director of commerce and consumer affairs as appropriate.

**SECTION 17.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 18.** In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

**SECTION 19.** Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

**SECTION 20.** This Act shall take effect on July 1, 2009.

(Approved June 24, 2009.)

#### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 150**

**S.B. NO. 21**

**A Bill for an Act Relating to Government.**

*Be It Enacted by the Legislature of the State of Hawaii:*

### **PART I**

**SECTION 1.** The legislature finds that the enactment of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, envisioned by President Obama as money going "out the door immediately," will require expedited



procedures to allow the State to take full advantage of funding from the federal stimulus plan to address, at the earliest practicable time, the programs, services, and benefits needed by the people of Hawaii.

The legislature further finds that in these times of economic turmoil, this Act would be instrumental in bringing, as soon as possible, additional financial assistance and other social services to Hawaii residents who have been affected by the current economic circumstances as well as improving and expanding benefits to the neediest individuals and families in Hawaii.

The purpose of this Act is to provide temporary exemptions from statutes relating to procurement and rulemaking to allow the State to expedite the implementation or expansion of programs, services, and benefits authorized by the American Recovery and Reinvestment Act of 2009. It is not the intent of the legislature to provide permanent exemptions to the relevant statutes, and this Act shall be applied only to expedite the expenditure of federal funds authorized in the American Recovery and Reinvestment Act of 2009, or to expending the matching state funds, if any, required to access the federal funding from the American Recovery and Reinvestment Act of 2009.

The American Recovery and Reinvestment Act of 2009 has specific accountability and transparency provisions to prevent fraud, waste, and abuse, to ensure against poor contracting or grant management, and to ensure the use of competitive procedures. The federal government is provided expansive investigatory and auditing powers to monitor, oversee, and ensure that the American Recovery and Reinvestment Act of 2009 funds are used for their intended purposes and with the full review and vetting required by law. Therefore, the goal of this Act is to strike the appropriate balance between expedited procedures and necessary accountability and transparency.

**SECTION 2.** To the extent not covered by any exemptions adopted by the procurement policy board or the respective chief procurement officers, and any law to the contrary notwithstanding, governmental bodies, and state agencies contracting for goods, services, construction, or health and human services using federal funds authorized by the American Recovery and Reinvestment Act of 2009, and matching state funds, if any, required to access the federal funding in the American Recovery and Reinvestment Act of 2009, may do so exempt from chapter 103D and chapter 103F, Hawaii Revised Statutes, and sections 103-8.5 and 103-53(a), Hawaii Revised Statutes, and subject to the requirements of section 3.

The chief procurement officer of each respective entity shall adopt and implement procedural requirements to carry out the purposes this Act.

**SECTION 3.** (a) Procurements for goods, services, construction, or health and human services shall be made through an electronic procurement system to obtain price quotations based on specifications; and registered vendors, contractors, and service providers that supply the goods, services, construction, or health and human services shall be solicited and considered to meet the minimum requirements. For purposes of this Act, "electronic procurement system" means a system that incorporates, at minimum, electronic notification to registered vendors, contractors, and service providers; electronic receipt of responses; and electronic notification of awards.

(b) An award shall be made to the lowest responsive and responsible offeror, using a fixed-price contract. For purposes of this Act, "fixed-price contract" means a contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances.

(c) Prior to the issuance of the solicitation, the chief procurement officer, or the chief procurement officer's designee, shall determine in writing whether an award to the lowest responsive and responsible offeror is not practicable or not advantageous to the State.

(d) When an award to the lowest responsive and responsible offeror is not practicable, an award shall be made to the offeror whose offer provides the best value to the State. For purposes of this Act, "best value" is defined as the most advantageous offer determined by evaluating and comparing all relevant evaluation criteria, in addition to price, so that the offer meeting the overall combination that best serves the State and is rated the highest, shall be selected. The quantitative criteria may include, but shall not be limited to, the total cost of ownership, performance history of the vendor, contractor, and service provider, quality of goods, services, construction, or health and human services, delivery, and proposed technical performance.

(e) If only one responsive and responsible offeror submits an acceptable offer, award may be made to the single offeror, provided the chief procurement officer, or the chief procurement officer's designee, determines in writing that the price submitted is fair and reasonable. If no offers are received, direct negotiations may be conducted, provided the chief procurement officer, or the chief procurement officer's designee, determines in writing, the need for the goods, services, construction, or health and human services.

(f) The chief procurement officer, or the chief procurement officer's designee, shall designate an evaluation committee consisting of a minimum of three governmental employees with sufficient and relevant qualifications related to the procurement. In designating the members of the evaluation committee, the chief procurement officer or designee shall ensure the impartiality and independence of committee members.

The chief procurement officer, or the chief procurement officer's designee, shall award the contract or contracts based upon the information provided by the evaluation committee. Written determination for the selection shall be placed in the procurement file.

(g) Construction contracts shall include security for bid, payment, and performance bonds when the estimated contract amount is \$50,000 or more, and conforms to the requirements of sections 103D-323 and 103D-324, Hawaii Revised Statutes.

(h) Any actual or prospective vendor, contractor, or service provider aggrieved by an award of a contract pursuant to this Act may protest a purchasing agency's failure to follow procedures established by this Act. The protest shall be submitted to the chief procurement officer, or the chief procurement officer's designee, in writing, within five working days after posting of the notice of award. The chief procurement officer, or the chief procurement officer's designee, may settle and resolve a protest by one or more of the following means:

- (1) Amending or canceling the solicitation;
- (2) Terminating the contract that was awarded;
- (3) Declaring the contract null and void from the time of its award; or
- (4) Affirming the purchasing agency's contract award decision.

If the protest is not resolved by mutual agreement, the chief procurement officer or designee shall issue a decision in writing within ten working days of receipt of the protest. The decision shall state the reasons for the action taken. A copy of the written decision shall be mailed or otherwise furnished to the vendor, contractor, or service provider who initiated the protest, the person awarded the contract, and to all other non-selected offerors.

The decision of the chief procurement officer or designee shall be final and conclusive. The procedures and remedies provided for in this Act shall be the

exclusive means available for vendors, contractors, or service providers aggrieved in connection with the award of a contract under this Act. The fact that a protest is filed shall not stay the award of any contract made under this Act, unless so ordered by the chief procurement officer.

(i) The procedures and remedies provided for in subsections (g) and (h) shall be the exclusive means available to resolve the concerns of persons aggrieved in connection with the award of a contract under this Act. The fact that a protest or a request for reconsideration is filed shall not stay the award of any contract made under this Act, unless so ordered by the chief procurement officer.

(j) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, Hawaii Revised Statutes. To demonstrate compliance, offerors shall be registered on the Hawaii compliance express. The procurement officer shall verify compliance for all contracts awarded. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards.

(k) Upon award, award information shall be posted on each respective governmental jurisdiction's website, except information determined to be confidential under chapter 92F, Hawaii Revised Statutes.

(l) The chief procurement officers may be more restrictive in their jurisdiction procedures, and impose any other requirement, as applicable, to ensure compliance with this Act.

(m) Nothing in this Act, any rules adopted thereunder, or any other authority shall be construed to exempt a bidder, offeror, contractor, or provider, as applicable, from any action that would otherwise be a cause for debarment or suspension under section 103D-702, Hawaii Revised Statutes, if the contract or procurement, but for this Act, would be subject to section 103-8.5 or 103-53(a), or chapter 103D or 103F, Hawaii Revised Statutes.

This subsection shall not be interpreted to absolve any person from applicable criminal penalties.

**SECTION 4.** The state procurement office shall adopt rules to implement the procurement procedures applicable to this Act. Any responsible agency shall also adopt rules whenever required to implement new or expanded programs, services, or benefits authorized or funded by the American Recovery and Reinvestment Act of 2009. Any such rules may be issued as interim rules by adoption and filing with the lieutenant governor, and by posting the interim rules on the lieutenant governor's website. Interim rules adopted pursuant to this Act shall be exempt from the requirements of chapter 91, Hawaii Revised Statutes, and shall take effect upon filing with the lieutenant governor. All interim rules adopted pursuant to this section shall be effective only through December 31, 2010. For any new or expanded programs, services, or benefits that have been implemented under interim rules to continue in effect beyond December 31, 2010, the responsible agency shall adopt rules in conformance with all the requirements of chapter 91, Hawaii Revised Statutes.

**SECTION 5.** There is appropriated out of the federal temporary assistance for needy families funds provided to the State under the American Recovery and Reinvestment Act of 2009 the sum of \$15,000,000, or so much thereof as may be necessary for fiscal year 2008-2009 to be used for the temporary assistance for needy families program; provided that the sum appropriated shall be in addition to the appropriation of temporary assistance for needy family funds in the General Appropriations Act of 2009<sup>1</sup>, and any other appropriations of temporary assistance for needy families funds for fiscal year 2008-2009.

The sum appropriated shall be expended by the department of human services.

## PART II

SECTION 6. (a) There is established a legislative federal economic stimulus program oversight commission, to be comprised of eleven members, as follows:

- (1) Six voting members:
  - (A) One member of the senate, to be appointed by the president of the senate;
  - (B) One member of the house of representatives to be appointed by the speaker of the house of representatives; and
  - (C) Four members of the public, representing citizens and local government, one each to be appointed by the president of the senate, speaker of the house of representatives, senate minority leader, and house of representatives minority leader; and
- (2) Five non-voting members, one each appointed by:
  - (A) Each member of Hawaii's congressional delegation; and
  - (B) The governor.

The voting members of the commission shall elect the chairperson of the commission.

(b) Legislative staff offices as determined by the president of the senate and the speaker of the house of representatives shall provide administrative assistance to the commission.

(c) In providing oversight of the distribution of any federal economic stimulus program funds and the implementation of program expenditures, the commission may:

- (1) Evaluate the coordination of federal stimulus funded programs within the State;
- (2) Determine if criteria developed for setting priorities are being followed;
- (3) Determine the adequacy of public notice and opportunity for public comment and input;
- (4) Evaluate the transparency of the bidding and the contracting process;
- (5) Evaluate the integrity of the distribution and expenditure of federal stimulus funded programs;
- (6) Determine the extent to which duplication and waste is prevented; and
- (7) Undertake any other tasks or efforts to ensure the integrity and fairness of the distribution and expenditure of all funds and implementation of all programs.

(d) Executive branch agencies shall provide information on the receipt and expenditure of federal economic stimulus program funds upon request of the commission.

(e) The commission may request specific audit services from the state auditor.

(f) For the purposes of this section, "commission" means the legislative federal economic stimulus program oversight commission.

PART III

SECTION 7. This Act shall take effect on June 29, 2009, and shall be repealed on June 30, 2011.

(Approved June 24, 2009.)

Note

1. Act 162.

ACT 151

S.B. NO. 1142

A Bill for an Act Relating to Physician Assistants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain statutes regarding physician assistants are outdated or obsolete. Currently, certain Hawaii statutes omit physician assistants from the definition of health care professionals who may provide care, be indemnified, or sign forms. The legislature further finds that physician assistants provide a wide variety of health care services to the people in this State. Amending certain statutes to authorize increased participation by licensed physician assistants in certain procedures and under certain circumstances will enable improved access to health care services, expedite the processing of paperwork, and provide optimal care at the initial point of access for Hawaii patients, especially in rural and underserved areas.

The purpose of this Act is to improve patient access to medical care by clarifying the procedure and circumstances under which licensed physician assistants may provide services, and by allowing them to render emergency care services with limited liability pursuant to Good Samaritan laws.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§453- Physician assistant; authority to sign documents.** Any physician assistant who holds a current, valid, and permanent license to practice medicine pursuant to this chapter, and who is under the supervision of a licensed physician or osteopathic physician, shall have the authority to sign the following documents:

- (1) Certification of psychiatric medical condition of the parents of a child applicant for aid from the temporary assistance for needy families program;
- (2) Evaluation forms for Hansen’s disease patients;
- (3) Orders for physical therapy and plans of care;
- (4) Pharmacist orders to assist in monitoring and management of anti-coagulation anemia and atrial fibrillation;
- (5) Orders for speech therapy and plans of care;
- (6) Applications for bracelets indicating compassionate care only;
- (7) Admissions applications for foster homes;
- (8) Dietary consultations forms; and
- (9) Medicaid application forms for nursing care facility admission.”

SECTION 3. Section 11-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any candidate may withdraw not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the twentieth day prior to an election for reasons of ill health. When a candidate withdraws for ill health, the candidate shall give notice in writing to the chief election officer if the candidate was seeking a congressional or state office, or the candidate shall give notice in writing to the county clerk if the candidate was seeking a county office. The notice shall be accompanied by a statement from a licensed physician or physician assistant indicating that such ill health may endanger the candidate's life."

SECTION 4. Section 286-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who holds a category (1), (2), or (3) license issued under this part who is unable to appear in person before the examiner of drivers to apply for a renewal of the driver's license, may, if the person is not disqualified from renewing the license under subsection (a) except as provided under subsection (h), apply for a renewal by mail. The applicant's request to have the license renewed by mail must be received by the examiner of drivers within ninety days after the expiration of the license or it shall be treated as an application for reactivation of an expired license under section 286-107.5. The examiner of drivers shall, upon receipt of the request, furnish the applicant with all necessary forms and instructions. An application for renewal made pursuant to this subsection shall be accompanied by a statement from a licensed physician or physician assistant certifying that the applicant was examined by the licensed physician or physician assistant not more than six months prior to the expiration date of the applicant's license and that the applicant was found by [sueh] the examination to have met the physical requirements established by the state director of transportation for the renewal of licenses. The application for renewal shall also be accompanied by:

- (1) A notarized statement of the applicant certifying that the applicant does not possess any valid license to operate the same or similar category or categories of motor vehicles, issued by another licensing authority (unless [sueh] the license is concurrently surrendered); and
- (2) Such other information as may be required by the examiner of drivers that is reasonably necessary to confirm the identity of the applicant and the applicant's fitness to continue to operate a motor vehicle."

SECTION 5. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall be guilty of violating this section if:

- (1) The person is in a motor vehicle which is not required to be equipped with a seat belt assembly under any federal motor vehicle safety standard unless the vehicle is in fact equipped with a seat belt assembly;
- (2) The person not restrained by a seat belt assembly is in a vehicle in which the number of persons exceeds the number of seat belt assemblies available in the vehicle or the number of seat belt assemblies originally installed in the vehicle, whichever is greater; provided that all available seat belt assemblies are being used to restrain passengers;

- (3) The person not restrained by a seat belt assembly has a condition which prevents appropriate restraint by the seat belt assembly; provided ~~[such]~~ the condition is duly certified by a physician or a physician assistant who shall state the nature of the condition, as well as the reason ~~[such]~~ the restraint is inappropriate;
- (4) The person not restrained by a seat belt assembly is operating a taxicab or other motor vehicle ~~[utilized]~~ used in performing a bona fide metered taxicab service which is regulated under chapter 269 or by county ordinance and is carrying passengers in the vehicle in the course of performing taxicab services; or
- (5) Otherwise exempted by rules adopted by the department of transportation pursuant to chapter 91."

SECTION 6. Section 291E-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§291E-12] Persons qualified to take blood specimen.** No person, other than a physician, physician assistant, registered nurse, or phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen."

SECTION 7. Section 291E-13, Hawaii Revised Statutes, is amended to read as follows:

**"[§291E-13] Additional tests.** The person tested may choose any physician, physician assistant, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood and also may choose any qualified person to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section 291E-3. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests administered at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests administered shall be made available to that person."

SECTION 8. Section 302A-1155, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A child may enter school provisionally upon submitting written documentation from a licensed physician, physician assistant, advanced practice registered nurse, or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further documentation showing that the required immunizations have been completed shall be submitted to the appropriate school official no later than three months after the child first entered the school. If all of the required immunizations cannot be completed within three months due to the length of the minimum intervals between doses of a particular vaccine required by the department of health, provisional admission may be extended so long as the child's parent or guardian provides documentation that appointments for required immunizations have been made and that progress toward completing the immunizations continues in accordance with the requirements of the department of health."

SECTION 9. Section 302A-1156, Hawaii Revised Statutes, is amended to read as follows:

**“[§302A-1156] Exemptions.** A child may be exempted from the required immunizations:

- (1) If a licensed physician or physician assistant certifies that the physical condition of the child is such that immunizations would endanger the child's life or health; or
- (2) If any parent, custodian, guardian, or any other person in loco parentis to a child objects to immunization in writing on the grounds that the immunization conflicts with that person's bona fide religious tenets and practices. Upon showing the appropriate school official satisfactory evidence of the exemption, no certificate or other evidence of immunization shall be required for entry into school.”

SECTION 10. Section 302A-1164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The student's parent or guardian shall provide the department with:
- (1) Written authorization for the self-administration of medication or the emergency administration of glucagon;
  - (2) In the case of self-administration of medication, written certification from the student's physician or physician assistant stating that the student:
    - (A) Has asthma, anaphylaxis, or another potentially life-threatening illness; and
    - (B) Is capable of, and has been instructed in, the proper method of self-administration of medication; and
  - (3) In the case of emergency administration of glucagon to a student with diabetes, written certification from the student's physician or physician assistant stating that the student has [physician's] medical orders that glucagon may be administered by a volunteer.”

SECTION 11. Section 321-23.3, Hawaii Revised Statutes, is amended to read as follows:

**“[§321-23.3] Volunteer emergency medical disaster response personnel.**

(a) All volunteer emergency medical disaster response personnel including:

- (1) Physicians;
- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers; ~~and~~
- (6) Mobile intensive care technicians; and
- (7) Physician assistants

licensed in the State, or employed by a health care facility, while engaged in the emergency response to a mass casualty event or disaster condition, including participation during periods of mass casualty and disaster management training, shall be deemed state employees or county employees, as the case may be, and shall have the powers, duties, rights, and privileges of such in the performance of their duties as prescribed by or under the authority of the governor or a county.

(b) For the purposes of this section, any physician or physician assistant licensed in the State having privileges and credentials at public or private health care facilities licensed in the State, shall be deemed as having credentials with



the same medical staff privileges at other hospitals for the purpose of rendering professional medical care under a mass casualty or disaster condition.

(c) In the case of injury or death arising out of and in the performance of duty pursuant to this section, including duty performed during periods of training, all volunteer emergency medical disaster response personnel and their dependents shall be entitled to all of the benefits provided in chapter 386, including medical services and supplies. In the case of injury or death, no public official shall be excluded from coverage of chapter 386. Benefits shall be based on average weekly wages set forth in section 386-51, or based on earnings from the usual employment of the person, or based on earnings at the rate of \$20 a week, whichever is most favorable to the claimant. Nothing in this section shall adversely affect the right of any person to receive any benefits or compensation under any act of Congress.

(d) Except in cases of wilful misconduct, the State, any county, or any volunteer emergency medical disaster response personnel engaged in the emergency response to a mass casualty event or disaster condition pursuant to this section (including volunteers whose services are accepted by any authorized person), shall not be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of rendering professional medical care under a mass casualty event or disaster condition. No act or omission shall be imputed to the owner of any vehicle by reason of ownership thereof; provided that nothing in this section shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle that may be insured under section 41D-8 to the extent of the insurance. Unless specifically provided, insurance effected under section 41D-8 shall not include coverage of such risk during a disaster emergency period.

(e) A physician assistant licensed in this State or licensed or authorized to practice in any other United States jurisdiction, or who is credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by a public emergency or a state or local disaster, may provide medical care that the physician assistant is authorized to provide without physician supervision, pursuant to chapter 453, or with appropriate physician supervision that is available; provided that:

- (1) Any physician who supervises a physician assistant providing medical care in response to a public emergency or state or local disaster shall not be required to meet the requirements set forth in chapter 453 for a supervising physician; and
- (2) No physician who supervises a physician assistant voluntarily and gratuitously providing emergency care pursuant to this subsection shall be liable for civil damages for any personal injuries which result from acts or omissions by the physician assistant providing emergency care.

[(e)] (f) For the purposes of this section:

“Disaster condition” means a sudden catastrophic event that overwhelms natural order and causes loss of property or life and exceeds or disrupts the capabilities of available medical resources to receive and provide medical care within a community.

“Mass casualty event” means a number of casualties generated more or less simultaneously, that exceeds the ability to provide usual medical care including but not limited to an airplane crash, collapsed building, bombing, or hurricane.”

SECTION 12. Section 325-33, Hawaii Revised Statutes, is amended to read as follows:

**“§325-33 Performance of vaccination and immunization.** Vaccinations or immunizations required of any person under this chapter shall be performed by duly licensed physicians or paramedical personnel under their direction, advanced practice registered nurses, physician assistants, or by authorized representatives of the department of health. A record of the immunization shall be maintained by the physician, physician assistant, or advanced practice registered nurse and shall be available to the department of education for school entry requirements and the department of health.”

SECTION 13. Section 325-34, Hawaii Revised Statutes, is amended to read as follows:

**“§325-34 Exemptions.** Section 325-32 shall be construed not to require the vaccination or immunization of any person for three months after a duly licensed physician, physician assistant, or an authorized representative of the department of health has signed two copies of a certificate stating the name and address of the person and that because of a stated cause the health of the person would be endangered by the vaccination or immunization, and has forwarded the original copy of the certificate to the person or, if the person is a minor or under guardianship, to the person’s parent or guardian, and has forwarded the duplicate copy of the certificate to the department for its files.

No person shall be subjected to vaccination, revaccination or immunization, who shall in writing object thereto on the grounds that the requirements are not in accordance with the religious tenets of an established church of which the person is a member or adherent, or, if the person is a minor or under guardianship, whose parent or guardian shall in writing object thereto on such grounds, but no objection shall be recognized when, in the opinion of the director of health, there is danger of an epidemic from any communicable disease.”

SECTION 14. Section 327C-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), a person shall be considered dead if, in the announced opinion of a physician licensed under part I of chapter 453, ~~[physician and surgeon licensed under chapter 460,]~~ physician excepted from licensure by section 453-2(b)(3), physician assistant licensed under chapter 453, or registered nurse licensed under chapter 457, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory functions. Death will have occurred at the time when the irreversible cessation of the functions first coincided.”

SECTION 15. Section 334-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Initiation of proceedings. An emergency admission may be initiated as follows:

- (1) If a police officer has reason to believe that a person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the officer shall call for assistance from the mental health emergency workers designated by the director. Upon determination by the mental health emergency workers that the person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A police officer may also take into custody and transport to any facility designated by the direc-

tor any person threatening or attempting suicide. The officer shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to a physician or psychologist at the facility.

- (2) Upon written or oral application of any licensed physician, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe the person is mentally ill or suffering from substance abuse, is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and in need of care or treatment, or both, giving the findings on which the conclusion is based, and directing that a police officer or other suitable individual take the person into custody and deliver the person to the nearest facility designated by the director for emergency examination and treatment. The ex parte order shall be made a part of the patient's clinical record. If the application is oral, the person making the application shall reduce the application to writing and shall submit the same by noon of the next court day to the judge who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.
- (3) Any licensed physician, physician assistant, or psychologist who has examined a person and has reason to believe the person is:
  - (A) Mentally ill or suffering from substance abuse;
  - (B) Imminently dangerous to self or others, or is gravely disabled, or is obviously ill; and
  - (C) In need of care or treatment;
 may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A licensed physician or physician assistant may administer [sueh] treatment as is medically necessary, for the person's safe transportation. A licensed psychologist may administer [sueh] treatment as is psychologically necessary."

SECTION 16. Section 346-352, Hawaii Revised Statutes, is amended to read as follows:

**"§346-352 Preauthorization exemption for certain physicians[-] and physician assistants.** Any physician or physician assistant licensed in this State who treats a medicaid recipient patient suffering from the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or who is a patient in need of transplant immunosuppressives, may prescribe any medications approved by the United States Food and Drug Administration and that are eligible pursuant to the Omnibus Budget Reconciliation Rebates Act and necessary to treat the condition, without having to comply with the requirements of any preauthorization procedure established by any other provision of this chapter."

SECTION 17. Section 347-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every physically handicapped person shall have the right to use a life jacket or other flotation device in a public swimming pool; provided that:

- (1) The handicapped person suffers from a physical disability or condition which requires the use of a life jacket or other flotation device; and
- (2) The handicapped person obtains a statement signed by a licensed physician or physician assistant attesting to the handicapped person's need to use a life jacket or other flotation device."

SECTION 18. Section 431:10A-115.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) For the purposes of this section, "child health supervision services" means physician-delivered, physician-supervised, physician assistant-delivered, or nurse-delivered services as defined by section 457-2 ("registered nurse") which shall include as the minimum benefit coverage for services delivered at intervals and scope stated in this section."

SECTION 19. Section 453-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every physician, osteopathic physician, physician assistant, and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner or in motor vehicle collisions resulting in serious injury or death, or, whenever the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information that may be of use to the chief of police. As used herein, the term "chief of police" means the chief of police of each county and any of the chief's authorized subordinates."

SECTION 20. Section 466J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any provision in this chapter to the contrary notwithstanding, a license shall not be required for:

- (1) A licensed medical practitioner in radiology;
- (2) A licensed practitioner of nuclear medicine;
- (3) A licensed physician assistant;
- [3] (4) A licensed doctor of dentistry;
- [4] (5) A licensed dental technician;
- [5] (6) A licensed dental hygienist;
- [6] (7) A student in an approved school for radiographers, radiation therapists, or nuclear medicine technologists, or in a school of medicine, podiatry, dentistry, or a chiropractic school; provided that the student is operating x-ray machines under the direct supervision of a licensed radiographer, licensed radiation therapist, licensed nuclear medicine technologist, or a qualified person pursuant to this chapter; and
- [7] (8) A radiologist duly licensed to practice medicine and radiology services in another state who uses telemedicine while located in this State to provide radiology services to a patient who is located in the

state in which the radiologist is licensed. For the purposes of this paragraph:

“Radiologist” means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

“Telemedicine” means the use of telecommunications services, as that term is defined in section 269-1, including real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, such as diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, and deliver health care services and information to parties separated by distance.”

SECTION 21. Section 587-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any child health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, licensed physician assistant, registered nurse or licensed practical nurse, hospital or similar institution’s personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, or police officer, who has before the person a child whom the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, ~~[such]~~ the person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.”

SECTION 22. Section 612-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A prospective juror is disqualified to serve as a juror if the prospective juror:

- (1) Is incapable, by reason of the prospective juror’s disability, of rendering satisfactory jury service; but a prospective juror claiming this disqualification may be required to submit a physician’s or physician assistant’s certificate as to the disability, and the certifying physician or physician assistant is subject to inquiry by the court at its discretion;
- (2) Has been convicted of a felony in a state or federal court and not pardoned; or
- (3) Fails to meet the qualifications in subsection (a).”

SECTION 23. Section 663-1.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any physician or physician assistant licensed to practice under the laws of this State or any other state who in good faith renders emergency medical care in a hospital to a person, who is in immediate danger of loss of life, without remuneration or expectation of remuneration, shall not be liable for any civil damages, if the physician or physician assistant exercises that standard of care expected of similar physicians or physician assistants under similar circumstances. Any physician who supervises a physician assistant providing emergency medical care pursuant to this section shall not be required to meet the requirements set forth in chapter 453 regarding supervising physicians.”

SECTION 24. Section 663-1.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) Any physician or physician assistant who administers an automated external defibrillator program without remuneration or expectation of remuneration shall not be liable for any civil damages resulting from any act or omission involving the use of an automated external defibrillator, except as may result from the physician’s or physician assistant’s gross negligence or wanton acts or omissions.

(g) This section shall not relieve any person, physician, physician assistant, or employer of:

- (1) Any other duty imposed by law regarding the designation and training of persons or employees;
- (2) Any other duty imposed by provisions regarding the maintenance of equipment to be used for resuscitation; or
- (3) Liability for any damages resulting from gross negligence, or wanton acts or omissions.”

SECTION 25. Section 671-1, Hawaii Revised Statutes, is amended by amending the definition of “health care provider” to read as follows:

“(1) “Health care provider” means a physician ~~[or]~~, surgeon, or physician assistant licensed under chapter 453, ~~[a physician and surgeon licensed under chapter 460,]~~ a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of ~~[such]~~ the institution or service.”

SECTION 26. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 27. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 28. This Act shall take effect upon approval.

(Approved June 25, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 152**

S.B. NO. 1164

A Bill for an Act Relating to Interstate Compact on Educational Opportunity for Military Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
INTERSTATE COMPACT ON EDUCATIONAL  
OPPORTUNITY FOR MILITARY CHILDREN**

§ -1 **Enactment of compact.** The interstate compact on educational opportunity for military children is hereby enacted into law and entered into by the State of Hawaii as a party, and is in full force and effect between the State and any other state joining therein in accordance with the terms of the compact, which compact is substantially as follows:

**ARTICLE I  
PURPOSE**

The purpose of this compact is to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

- (1) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements;
- (2) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;
- (3) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;
- (4) Facilitating the on-time graduation of children of military families;
- (5) Providing for the adoption and enforcement of administrative rules implementing the provisions of this compact;
- (6) Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;
- (7) Promoting coordination between this compact and other compacts affecting military children; and
- (8) Promoting flexibility and cooperation between the educational system, parents, and the student to achieve educational success for the student.

**ARTICLE II  
DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

“Active duty” means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A).

“Appropriate education agency” means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

“Children of military families” means school-aged children, enrolled in kindergarten through twelfth grade, in the households of active duty members.

“Compact” means the interstate compact on educational opportunity for military children.

“Compact commissioner” means the voting representative of each compacting state appointed pursuant to article VIII of this compact.

"Deployment" means the period of one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

"Education records" means those official records, files, and data directly related to a student and maintained by the school or appropriate education agency, including records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

"Extracurricular activities" means a voluntary activity sponsored by the school or appropriate education agency or an organization sanctioned by the appropriate education agency. Extracurricular activities include preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

"Interstate commission on educational opportunity for military children" or "interstate commission" means the commission that is created under article IX of this compact.

"Local education agency" means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

"Member state" means a state that has enacted this compact.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory. The term shall not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Non-member state" means a state that has not enacted this compact.

"Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

"Rule" means a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

"Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory.

"Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

"Student financial obligation" means any unpaid or outstanding fines or fees.

"Test period" means the date(s) in which schools are conducting testing, assessments, or both, that are required by federal or state laws.



“Transition” means the formal and physical process of transferring from school to school, or the period of time in which a student moves from one school in the sending state to another school in the receiving state.

“Uniformed service” means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

“Veteran” means a person who served in the uniformed services and who was discharged or released therefrom under honorable conditions.

### ARTICLE III APPLICABILITY

(a) Except as otherwise provided in subsection (b), this compact shall apply to the children of:

- (1) Active duty members of the uniformed services as defined in this compact, including members of the national guard and military reserves on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A);
- (2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired, for a period of one year after medical discharge or retirement; and
- (3) Members of the uniformed services who die while on active duty or as a result of injuries sustained while on active duty, for a period of one year after death.

(b) This interstate compact shall only apply to appropriate education agencies as defined in this compact.

(c) The provisions of this compact shall not apply to the children of:

- (1) Inactive members of the national guard and military reserves;
- (2) Members of the uniformed services now retired, except as provided in subsection (a);
- (3) Veterans of the uniformed services, except as provided in subsection (a); and
- (4) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

### ARTICLE IV EDUCATIONAL RECORDS AND ENROLLMENT

(a) Unofficial or “hand-carried” education records. If official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial education records containing uniform information as determined by the interstate commission. The unofficial education records shall only be furnished to the parents if all student financial obligations have been met. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

(b) Official education records and transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the interstate commission. The official education records

shall only be furnished to the parents if all student financial and school obligations have been met.

(c) Immunizations. Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations shall be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission. This section shall not prohibit state department of health requirements concerning tuberculosis examinations.

(d) Kindergarten and first grade entrance age. Students may continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from an appropriate education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the appropriate education agency in the sending state shall be eligible for enrollment in the next higher grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

## ARTICLE V PLACEMENT AND ATTENDANCE

(a) Course placement. If the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered or both; provided that these programs exist in the receiving state school and space is available as determined by the principal. Course placement includes honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

(b) Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation and placement in like programs in the sending state; provided that these programs exist in the receiving state school and space is available as determined by the principal. The programs include gifted and talented programs and English as a second language programs. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(c) Special education services.

- (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.
- (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the

receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This paragraph shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(d) Placement flexibility. Appropriate education agency administrative officials shall have flexibility in waiving a course or program prerequisites, or other precondition for placement in courses or programs offered under the jurisdiction of the appropriate education agency.

(e) Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the appropriate education agency superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian. This subsection shall not require excused absences to be granted during test periods.

## **ARTICLE VI ELIGIBILITY**

- (a) Eligibility for enrollment.
- (1) Special power of attorney, relating to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.
- (2) The appropriate education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.
- (3) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was permanently enrolled while residing with the custodial parent. Upon the return of the custodial parent, the child shall be allowed to finish the school year in the school currently enrolled, but shall enroll in the school within the jurisdiction of the custodial parent during the following school year.

(b) Eligibility for extracurricular participation. State education agencies and appropriate education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified and space is available in the receiving state school as determined by the principal.

## **ARTICLE VII GRADUATION**

To facilitate the on-time graduation of children of military families, state and appropriate education agencies shall incorporate the following procedures:

- (1) Waiver requirements. Appropriate education agency administrative officials may waive specific courses required for graduation if similar coursework has been satisfactorily completed in another appropriate education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the appropriate education agency

shall provide an alternative means of acquiring required coursework so that graduation may occur on time. This section shall not obligate the school or appropriate education agency to pay for an online course if funding is unavailable.

- (2) Exit exams. For students entering high school in the eleventh or twelfth grade, states shall accept:
  - (A) Exit or end-of-course exams required for graduation from the sending state;
  - (B) National norm-referenced achievement tests; or
  - (C) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

If subparagraphs (A), (B), and (C) cannot be accommodated by the receiving state for a student transferring in student's senior year, then paragraph (3) shall apply.

- (3) Transfers during senior year. If a military student transferring at the beginning or during the senior year is ineligible to graduate from the receiving appropriate education agency after all alternatives have been considered, the sending and receiving appropriate education agencies shall ensure the receipt of a diploma from the sending appropriate education agency, if the student meets the graduation requirements of the sending appropriate education agency. If one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs (1) and (2) of this article. This paragraph permits but shall not require a sending state to deny a diploma to a student transferring to a receiving state with an exit exam requirement if the student does not meet the graduation requirements of the appropriate education agency of the sending state.

## ARTICLE VIII STATE COORDINATION

(a) Each member state, through the creation of a state council or use of an existing body or board, shall provide for the coordination among its agencies of government, appropriate education agencies, and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its state council, its membership shall include at least the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent appropriate education agencies on the state council.

(b) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(c) The compact commissioner responsible for the administration and management of the state's participation in the compact shall be recommended by the superintendent of education with the approval of the board of education.

(d) The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

**ARTICLE IX**  
**INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY**  
**FOR MILITARY CHILDREN**

(a) The member states hereby create the “interstate commission on educational opportunity for military children”. The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

- (1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;
- (2) Consist of one interstate commission voting representative from each member state who shall be that state’s compact commissioner.
  - (A) Each member state represented at a meeting of the interstate commission is entitled to one vote.
  - (B) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.
  - (C) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.
  - (D) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication;
- (3) Include ex-officio, non-voting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include members of the representative organizations of military family advocates, appropriate education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;
- (4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;
- (5) Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee;

- (6) Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.
- (b) Public notice shall be given by the interstate commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:
  - (1) Relate solely to the interstate commission's internal personnel practices and procedures;
  - (2) Disclose matters specifically exempted from disclosure by federal and state statute;
  - (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
  - (4) Involve accusing a person of a crime, or formally censuring a person;
  - (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (6) Disclose investigative records compiled for law enforcement purposes; or
  - (7) Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.
- (c) For a meeting, or portion of a meeting, closed pursuant to subsection (b), the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of roll call votes. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.
- (d) The interstate commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting, as is reasonably possible, shall conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.
- (e) The interstate commission shall create a process that permits military officials, education officials, and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or appropriate education agency. This section shall not be construed to create a private right of action against the interstate commission, any member state, or any state education agency or appropriate education agency.

## ARTICLE X

### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

- (1) To provide for dispute resolution among member states;

- (2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;
- (3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;
- (4) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, use all necessary and proper means, including the use of judicial process. Any action to enforce compliance with the compact provisions by the interstate commission shall be brought against a member state only;
- (5) To establish and maintain offices which shall be located within one or more of the member states;
- (6) To purchase and maintain insurance and bonds;
- (7) To borrow, accept, hire, or contract for services of personnel;
- (8) To establish and appoint committees including an executive committee as required by article IX, subsection (a), paragraph (5), which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- (9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of it;
- (11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) To establish a budget and make expenditures;
- (14) To adopt a seal and bylaws governing the management and operation of the interstate commission;
- (15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. The reports shall include any recommendations that may have been adopted by the interstate commission;
- (16) To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;
- (17) To establish uniform standards for the reporting, collecting, and exchanging of data;
- (18) To maintain corporate books and records in accordance with the bylaws;
- (19) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
- (20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

# **ARTICLE XI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

(a) The interstate commission, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establishing an executive committee and such other committees as may be necessary;
- (3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
- (5) Establishing the titles and responsibilities of the officers and staff of the interstate commission;
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and
- (7) Providing "start up" rules for the initial administration of the compact.

(b) The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs incurred by them in the performance of their responsibilities as officers of the interstate commission.

(c) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

- (1) Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
- (2) Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
- (3) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the interstate commission.

(d) The executive committee, subject to the approval of the interstate commission, may appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

(e) The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity,



for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person.

- (1) The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person.
- (2) The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.
- (3) To the extent not covered by the state involved, a member state, the interstate commission, or the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.
- (f) The compact commissioner and any person representing the state in the interstate commission, in their individual or official capacity, and the member state, shall be immune from suit and liability caused by or arising out of actions, errors, or omissions of the interstate commission.

## ARTICLE XII

### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate reasonable rules to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact,

then the action by the interstate commission shall be invalid and have no force or effect.

(b) Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, as may be appropriate to the operations of the interstate commission.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

(d) If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt this compact, then such rule shall have no further force and effect in any compacting state.

### ARTICLE XIII OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(a) Oversight.

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted hereunder shall have the force and effect of law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact, or promulgated rules.

(b) Default, technical assistance, suspension, and termination. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default shall not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted.

Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(f) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(g) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(h) Dispute resolution.

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution for disputes as appropriate.

(i) Enforcement.

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of this compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

## ARTICLE XIV

### FINANCING OF THE INTERSTATE COMMISSION

(a) The interstate commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate rules binding upon all member states.

(c) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## **ARTICLE XV**

### **MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT**

(a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

## **ARTICLE XVI**

### **WITHDRAWAL AND DISSOLUTION**

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) Dissolution of compact.

- (1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.
- (2) Upon the dissolution of this compact, the compact becomes void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

## ARTICLE XVII SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

## ARTICLE XVIII BINDING EFFECT OF COMPACT AND OTHER LAWS

- (a) Other laws.
- (1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.
- (2) All member states' laws conflicting with this compact shall be superseded to the extent of the conflict.
- (b) Binding effect of the compact.
- (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, shall be binding upon the member states.
- (2) All agreements between the interstate commission and the member states shall be binding in accordance with their terms.
- (3) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

§ -2 **State council.** There is established within the board of education for administrative purposes the state council on educational opportunity for military children. The board of education shall establish the state council, as required by article VIII of the compact. The membership of the state council shall include, at a minimum:

- (1) The superintendent of education or the superintendent's designee;
- (2) The complex area superintendents of the administrative districts that contain the Leilehua, Radford/Moanalua, and Kalaheo school complexes;
- (3) A complex area superintendent from the Leeward district;
- (4) The military liaison from the department of education;
- (5) A military representative from the United States Pacific Command;
- (6) One installation-level representative from each branch of service of the Air Force, Army, Marine Corps, Navy, and Coast Guard;
- (7) A representative of the executive branch of government;
- (8) The chairperson of the senate education committee or the chairperson's designee;

- (9) The chairperson of the house education committee or the chairperson's designee; and
- (10) Other offices and stakeholder groups the state council deems necessary.

Members of the state council may delegate voting authority to another person for a specified meeting or meetings. The state council shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

The council shall establish policies and procedures governing its operations but subject to the open meeting requirements of chapter 92.

**§ -3 Appointment of compact commissioner.** As required by article VIII of the compact, the state superintendent of education shall recommend, with approval of the board of education, the compact commissioner, who shall be responsible for the administration and management of the State's participation in the compact."

**SECTION 2.** This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.

(Approved June 25, 2009.)

## ACT 153

S.B. NO. 868

A Bill for an Act Relating to Energy Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that there is a need to coordinate the development of the State's energy resources to preserve energy security by increasing the use of indigenous renewable energy and reducing the State's over-dependence on oil. The legislature also finds that energy data and analysis are essential to energy planning, policy development, and energy emergency preparedness and response. In recent years, energy markets, resources, systems and technologies, the variety and types of fuels, environmental standards and specifications of fuels, and policies related to energy and fuels have all undergone dramatic changes. Current and future transitional trends are expected to continue to influence Hawaii's energy situation. These events reveal a critical need to develop the State's technical and analytic capabilities and understanding of Hawaii's energy resources, markets, and systems for effective energy planning to achieve energy independence and increase the State's energy security.

The legislature also finds that the director of business, economic development, and tourism, who serves as the state energy resources coordinator pursuant to section 196-3, Hawaii Revised Statutes, is responsible for coordinating the development of the State's energy resources, policies, programs, and plans.

The energy data and analytic functions of the state energy resources coordinator are statutorily distinct from, and not redundant to other agencies' functions. The public utilities commission, for example, functions as a state watchdog, focusing primarily on monitoring petroleum prices and industry profits.

The legislature, in Act 182, Session Laws of Hawaii 2007, explicitly acknowledged the difference between the department of business, economic

development, and tourism's energy analysis role and the public utilities commission's role to conduct analysis with a focus on petroleum prices and petroleum industry profits. The statute directed the department of business, economic development, and tourism to use this data to effectuate the purposes of chapters 125C and 196, Hawaii Revised Statutes, and other relevant laws. The legislature recognized that the use and analysis of energy and fuels data remains critical to virtually all of the department of business, economic development, and tourism's statutory energy program functional requirements.

It is essential and appropriate to include within chapter 196, Hawaii Revised Statutes, that the department of business, economic development, and tourism shall be responsible for developing and ensuring the achievement of the State's energy policies, programs, and plans.

Therefore, the legislature finds that it is necessary to amend chapter 196, Hawaii Revised Statutes, to:

- (1) Update certain definitions for clarity, taking into account the changes in the State's energy resources, markets, and systems;
- (2) Establish definitive policy guidance needed on the nature and relationship of energy data analyses to the State's energy program, and to clearly delineate distinctive analytic roles and responsibilities of state agencies conducting energy data functions; and
- (3) Provide the statutory basis for a systematic state energy analytic capacity and capability, which is essential to support the energy resources coordinator's role.

SECTION 2. Section 196-1, Hawaii Revised Statutes, is amended to read as follows:

**"§196-1 Findings and declaration of necessity.** The legislature finds that:

- (1) The global demand for petroleum and its derivatives has resulted in a significant and fundamental market escalation in oil prices, has caused severe economic hardships throughout the [State] state, and threatens to impair the public health, safety, and welfare.

The State of Hawaii, with its near total dependence on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market. This [is an anomalous] situation[; can be changed, as there are few places in the world so generously endowed with natural energy: geothermal, solar radiation, ocean temperature differential, wind, biomass, waves, and currents[—], which are all potential non-polluting power sources;

- (2) There is a real need for comprehensive strategic [comprehensive] planning in the effort towards achieving full [utilization] use of Hawaii's energy [resource programs] resources and the most effective allocation of energy resources throughout the [State.] state. Planning is necessary and desirable in order that the State may recognize and declare the major problems and opportunities in the field of energy resources. Both short-range and long-range planning will permit the articulation of:
  - (A) Broad policies, goals, and objectives;
  - (B) Criteria for measuring and evaluating accomplishments of objectives;
  - (C) Identification and implementation of programs that will carry out such objectives; and
  - (D) A determination of requirements necessary for the optimum development of Hawaii's energy resources.

Such planning efforts will identify present conditions and major problems relating to energy resources, their exploration, development, production, and distribution. It will show the projected nature of the situation and rate of change ~~[and]~~, present conditions for the foreseeable future based on a projection of current trends in the development of energy resources in Hawaii~~[-]~~, and include initiatives designed to fundamentally change how Hawaii consumes energy by accelerating the production of renewable and alternative energy, increasing energy efficiency, developing and adopting new technologies, and ensuring the State's energy security:

- (3) The State requires an in-depth understanding of the causes and effects of any transitional issues and trends related to changes in the State's energy resources, systems, and markets:
- [(3)] (4) There are many agencies of the federal, state, and county governments in Hawaii, as well as many private agencies~~[-]~~ and a broad set of non-governmental entities, engaged in, or expressing an interest in, various aspects of the exploration, research, distribution, transportation, storage, conservation, and production of all forms of energy resources in Hawaii. Some of these agencies include the University of Hawaii~~[-]~~; the department of land and natural resources~~[-]~~; the department of business, economic development, and tourism~~[-]~~; the division of consumer advocacy~~[-]~~; the public utilities commission; the state civil defense agency; the federal energy office~~[-]~~; and various county agencies, as well as [the oil companies, gas stations, and other private enterprises;] Hawaii's energy and energy-related companies; and
- [(4)] (5) There is ~~[immediate]~~ an ongoing need in this state to coordinate the efforts of ~~[all these agencies;]~~ statewide industry and government energy interests; maintain the technical capability and adequate capacity to quantitatively and qualitatively evaluate, analyze, develop, and coordinate implementation of private and public sector energy planning efforts; recommend market-based policies to develop Hawaii's energy resources, systems, and markets; establish and coordinate programs to preserve and protect the State's energy security, maintain a robust energy emergency preparedness program, and effectuate the conservation of [fuel;] energy resources to provide for the equitable distribution thereof~~[-]~~; and to formulate plans for the development and use of alternative energy sources. There is a need for [such] coordination, capability, and capacity, so that there will be maximum conservation and [utilization] use of energy resources in the [State;] state."

SECTION 3. Section 196-2, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:

"Commission" means the public utilities commission.

"Distributor" means:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the state and sells it at wholesale or retail, or who uses it directly in the manufacture of products or for the generation of power;
- (2) Every person who imports or causes to be imported into the state, or exports or causes to be exported from the state, any fuel;



- (3) Every person who acquires fuel through exchanges with another distributor; and
- (4) Every person who purchases fuel for resale at wholesale or retail rates from any person described in paragraph (1), (2), or (3).

"Electricity" means all electrical energy produced by combustion of any fuel, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, and waves, or any other source.

"Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

"Fuel" means fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the state or that may be exported therefrom, including petroleum and petroleum products and gases to include all fossil fuel-based gases, coal tar, vegetable ferments, biomass, municipal solid waste, biofuels, hydrogen, agricultural products used as fuels and as feedstock to produce fuels, and all fuel alcohols."

2. By amending the definition of "energy resources" to read:

"Energy resources" means [and includes fossil fuel, nuclear, geothermal, solar, hydropower, wind, and other means of generating energy.] fuel, and also includes all electrical or thermal energy produced by combustion of any fuel, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, waves, or any other source."

SECTION 4. Section 196-4, Hawaii Revised Statutes, is amended to read as follows:

**"§196-4 Powers and duties.** Subject to the approval of the governor, the coordinator shall:

- (1) Formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the optimum development of Hawaii's energy resources;
- (2) Conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other organizations and recommend to the governor and to the legislature programs ~~[which]~~ that represent the most effective allocation of resources for the development of energy ~~[sources;]~~ resources;
- (3) Formulate and recommend specific proposals, as necessary, for conserving energy ~~[and fuel;]~~ resources, including the allocation and distribution thereof, to the governor and to the legislature;
- (4) Assist public and private agencies in implementing energy conservation and related measures;
- (5) Coordinate the State's energy conservation and allocation programs with that of the federal government, other state governments, governments of nations with interest in common energy resources, and the political subdivisions of the State;
- (6) Develop programs to encourage private and public exploration and research of alternative energy resources ~~[which]~~ that will benefit the ~~[State;]~~ state;
- (7) Conduct public education programs to inform the public of the energy resources situation, as it may exist, from time to time and of the government actions taken ~~[thereto];~~

- (8) Serve as consultant to the governor, public agencies, and private industry on matters related to the acquisition, ~~[utilization]~~ use, and conservation of energy resources;
- (9) Contract for services when required for the implementation of this chapter;
- (10) Review proposed state actions ~~[which]~~ that the coordinator finds to have significant effect on energy ~~[consumption]~~ resources and report to the governor their effect on the energy conservation program, and perform such other services as may be required by the governor and the legislature;
- (11) Prepare and submit an annual report and ~~[such]~~ other reports as may be requested to the governor and to the legislature on the implementation of this chapter and all matters related to energy resources; ~~[and]~~
- (12) Adopt rules for the administration of this chapter pursuant to chapter 91~~[-]~~; provided that the rules shall be submitted to the legislature for review~~[-]~~; and
- (13) Develop and maintain a comprehensive and systematic quantitative and qualitative capacity to analyze the status of energy resources, systems, and markets, both in-state and those to which Hawaii is directly tied, particularly in relation to the State's economy, and to recommend, develop proposals for, and assess the effectiveness of policy and regulatory decisions, and conduct energy emergency planning."

SECTION 5. Section 196-6, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~§196-6]] Energy efficient storage hot water heaters.** (a) No new storage hot water heater which is not certified as meeting the energy efficiency standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as set forth as the current ASHRAE 90 Standard, shall be sold or installed in the ~~[State]~~ state after June 1, 1985; provided, however, that nothing contained herein shall prevent sales from being made in the ~~[State]~~ state for use outside the ~~[State:] state.~~ ~~[Upon May 18, 1984, no retail seller or distributor shall increase their inventory of storage hot water heaters which are not certified as being in compliance with the current ASHRAE 90 Standard, and all storage hot water heaters sold after June 1, 1985, shall be certified by the manufacturer, or the retailer, or both, as being in compliance with the current ASHRAE 90 Standard.~~

~~(b) Within ninety days after May 18, 1984, the energy resources coordinator or its successor entity shall notify, in writing, all retail sellers and distributors of storage hot water heaters doing business in this State, of the provisions of this section.~~

~~(e) Any]~~ (b) Any violation of subsection (a) shall be a misdemeanor; provided a fine of not less than \$50 nor more than \$500 shall be imposed, and all fines shall be imposed consecutively. Each storage hot water heater sold in violation of this section shall constitute a separate offense."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2009.

(Approved June 25, 2009.)

## ACT 154

S.B. NO. 464

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:

**“§235-12.5 Renewable energy technologies; income tax credit.** (a) When the requirements of subsection [(e)] (d) are met, each individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the State by a taxpayer during the taxable year. ~~[This credit shall be available for systems installed and placed in service in the State after June 30, 2003.]~~ The tax credit may be claimed as follows:

- (1) ~~Solar thermal energy systems for:~~
  - (A) ~~Single family residential property for which a building permit was issued prior to January 1, 2010: thirty five per cent of the actual cost or \$2,250, whichever is less;~~
  - (B) ~~Multi family residential property: thirty five per cent of the actual cost or \$350 per unit, whichever is less; and~~
  - (C) ~~Commercial property: thirty five per cent of the actual cost or \$250,000, whichever is less;~~
- (2) ~~Wind powered energy systems for:~~
  - (A) ~~Single family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;~~
  - (B) ~~Multi family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and~~
  - (C) ~~Commercial property: twenty per cent of the actual cost or \$500,000, whichever is less; and~~
- (3) ~~Photovoltaic energy systems for:~~
  - (A) ~~Single family residential property: thirty five per cent of the actual cost or \$5,000, whichever is less;~~
  - (B) ~~Multi family residential property: thirty five per cent of the actual cost or \$350 per unit, whichever is less; and~~
  - (C) ~~Commercial property: thirty five per cent of the actual cost or \$500,000, whichever is less;]~~
- (1) For each solar energy system: thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less;
- or
- (2) For each wind-powered energy system: twenty per cent of the actual cost or the cap amount determined in subsection (b), whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service in the State by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

(b) The amount of credit allowed for each eligible renewable energy technology system shall not exceed the applicable cap amount, which is determined as follows:

- (1) If the primary purpose of the solar energy system is to use energy from the sun to heat water for household use, then the cap amounts shall be:
  - (A) \$2,250 per system for single-family residential property;
  - (B) \$350 per unit per system for multi-family residential property; and
  - (C) \$250,000 per system for commercial property;
- (2) For all other solar energy systems, the cap amounts shall be:
  - (A) \$5,000 per system for single-family residential property; provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a)(3), the credit shall be reduced by thirty-five per cent of the actual system cost or \$2,250, whichever is less;
  - (B) \$350 per unit per system for multi-family residential property; and
  - (C) \$500,000 per system for commercial property;
- (3) For all wind-powered energy systems, the cap amounts shall be:
  - (A) \$1,500 per system for single-family residential property; provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a)(3), the credit shall be reduced by twenty per cent of the actual system cost or \$1,500, whichever is less;
  - (B) \$200 per unit per system for multi-family residential property; and
  - (C) \$500,000 per system for commercial property.

~~[(b)] (c)~~ For the purposes of this section:

“Actual cost” means costs related to the renewable energy technology systems under subsection (a), including accessories and installation, but not including the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system and costs for which another credit is claimed under this chapter.

“Household use” means any use to which heated water is commonly put in a residential setting, including commercial application of those uses.

“Renewable energy technology system” means a new system that captures and converts a renewable source of energy, such as ~~[wind, heat (solar thermal), or light (photovoltaic) from the sun]~~ solar or wind energy, into:

- (1) A usable source of thermal or mechanical energy;
- (2) Electricity; or
- (3) Fuel.

“Solar or wind energy system” means any identifiable facility, equipment, apparatus, or the like that converts ~~[insolation]~~ solar or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.

~~[(e)] (d)~~ For taxable years beginning after December 31, 2005, the dollar amount of any utility rebate shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit.

~~[(d)] (e)~~ The director of taxation shall prepare any forms that may be necessary to claim a tax credit under this section, including forms identifying the technology type of each tax credit claimed under this section, whether for

[solar thermal, photovoltaic from the sun,] solar or wind. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

~~(e)~~ (f) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted~~[-], unless otherwise elected by the taxpayer pursuant to subsection (g) or (h).~~ All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

~~(f) By or before December, 2005, to the extent feasible, using existing resources to assist the energy efficiency policy review and evaluation, the department shall assist with data collection on the following:~~

- (1) The number of renewable energy technology systems that have qualified for a tax credit during the past year by:
  - (A) Technology type (solar thermal, photovoltaic from the sun, and wind); and
  - (B) Taxpayer type (corporate and individual); and
- (2) The total cost of the tax credit to the State during the past year by:
  - (A) Technology type; and
  - (B) Taxpayer type.

~~(g) For systems installed and placed in service in 2009, no residential home developer shall be entitled to claim the credit under subsections (a)(1)(A), (a)(2)(A), and (a)(3)(A). A residential home developer is defined as a person who holds more than one residential dwelling for sale as inventory.]~~

(g) For solar energy systems, a taxpayer may elect to reduce the eligible credit amount by thirty per cent and if this reduced amount exceeds the amount of income tax payment due from the taxpayer, the excess of the credit amount over payments due shall be refunded to the taxpayer; provided that tax credit amounts properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; and provided further that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

The election required by this subsection shall be made in a manner prescribed by the director on the taxpayer's return for the taxable year in which the system is installed and placed in service. A separate election may be made for each separate system that generates a credit. An election once made is irrevocable.

(h) Notwithstanding subsection (g), for any renewable energy technology system, an individual taxpayer may elect to have any excess of the credit over payments due refunded to the taxpayer, if:

- (1) All of the taxpayer's income is exempt from taxation under section 235-7(a)(2) or (3); or
- (2) The taxpayer's adjusted gross income is \$20,000 or less (or \$40,000 or less if filing a tax return as married filing jointly);

provided that tax credits properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; and provided further that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

A husband and wife who do not file a joint tax return shall only be entitled to make this election to the extent that they would have been entitled to make the election had they filed a joint tax return.

The election required by this subsection shall be made in a manner prescribed by the director on the taxpayer's return for the taxable year in which the

system is installed and placed in service. A separate election may be made for each separate system that generates a credit. An election once made is irrevocable.

(i) No taxpayer shall be allowed a credit under this section for the portion of the renewable energy technology system required by section 196-6.5 that is installed and placed in service on any newly constructed single-family residential property authorized by a building permit issued on or after January 1, 2010.

(j) To the extent feasible, using existing resources to assist the energy-efficiency policy review and evaluation, the department shall assist with data collection on the following for each taxable year:

(1) The number of renewable energy technology systems that have qualified for a tax credit during the calendar year by:

(A) Technology type; and

(B) Taxpayer type (corporate and individual); and

(2) The total cost of the tax credit to the State during the taxable year by:

(A) Technology type; and

(B) Taxpayer type.

(k) This section shall apply to eligible renewable energy technology systems that are installed and placed in service on or after July 1, 2009.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009, and shall apply to taxable years beginning after December 31, 2008.

(Approved June 25, 2009.)

## ACT 155

H.B. NO. 1464

A Bill for an Act Relating to Energy Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I PURPOSE

SECTION 1. Attaining independence from our detrimental reliance on fossil fuels has been a long-standing objective for the State.

Hawaii is the state most dependent on petroleum for its energy needs. It pays the highest electricity prices in the United States, and its gasoline costs are among the highest in the country. Fuel surcharges that pass the increases in fuel costs to consumers have significantly increased the cost of over eighty per cent of the goods and services sold in Hawaii. Household fuels and utilities costs rose 36.4 per cent, from the previous year, as reflected in the Honolulu consumer price index during the second quarter of 2008. Hawaii’s energy costs approach eleven per cent of its gross domestic product, whereas in most states energy costs are four per cent of gross domestic product. Between 2005 and 2008, state government consumption of electricity increased 3.9 per cent, but expenditures increased 56.8 per cent.

Reducing our oil dependence and the consequent price volatility and attaining energy security are critical. More than ninety-six per cent of petroleum in Hawaii now comes from foreign sources. Clean energy from indigenous

renewable resources has the potential to provide an estimated one hundred fifty per cent of current installed electrical capacity.

On January 28, 2008, the signing of a memorandum of understanding between the State of Hawaii and the United States Department of Energy launched the Hawaii clean energy initiative. This initiative and long-term partnership between Hawaii and the United States Department of Energy is aimed at accelerating the use and development of energy efficiency and renewable energy technologies; allowing Hawaii to serve as a model and demonstration for the United States and other island communities; and developing a national partnership to accelerate system transformation, whereby the following goals are attained:

- (1) Achieve a seventy per cent clean energy economy for Hawaii within a generation;
- (2) Increase Hawaii's energy security;
- (3) Capture economic benefits of clean energy for all levels of society;
- (4) Contribute to greenhouse gas reduction;
- (5) Foster and demonstrate innovation;
- (6) Build the workforce of the future; and
- (7) Serve as a national model.

The purpose of this Act is to provide a first step in aligning Hawaii's energy policy laws with the State's energy goals. For Hawaii to realize energy independence and economic stability, the transformation of its energy system must encompass changes to:

- (1) Hawaii's policy and regulatory framework;
- (2) System-level technology development and integration;
- (3) Financing or capital investment; and
- (4) Institutional system planning.

To enable energy efficiency and renewable energy resources to meet forty per cent of Hawaii's energy demand by 2030, the Hawaii clean energy initiative set goals for energy efficiency, renewable and indigenous electricity production, energy delivery and improvements to the electrical grid, and diversification of energy sources for transportation. The initiatives to achieve these goals were developed by the United States Department of Energy, the department of business, economic development, and tourism, and members of the five Hawaii clean energy initiative working groups during 2008. This effort presents a range of measures to reach aggressive energy goals while balancing the interests of various stakeholders.

## PART II RENEWABLE PORTFOLIO STANDARDS

SECTION 2. Section 269-91, Hawaii Revised Statutes, is amended by amending the definitions of "renewable electrical energy" and "renewable energy" to read as follows:

"Renewable electrical energy" means:

- (1) Electrical energy generated using renewable energy as the source; and
- (2) Electrical energy savings brought about by [the]:
  - (A) The use of renewable displacement or off-set technologies, including solar water heating, sea-water air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; provided that, beginning January 1, 2015, electrical energy savings shall not

include customer-sited, grid-connected renewable-energy systems; or

[(3)] ~~Electrical energy savings brought about by the~~

(B) The use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.

“Renewable energy” means energy generated or produced ~~[utilizing]~~ using the following sources:

- (1) Wind;
- (2) The sun;
- (3) Falling water;
- (4) Biogas, including landfill and sewage-based digester gas;
- (5) Geothermal;
- (6) Ocean water, currents, and waves~~;~~, including ocean thermal energy conversion;
- (7) Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste;
- (8) Biofuels; and
- (9) Hydrogen produced from renewable energy sources.”

SECTION 3. Section 269-92, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each electric utility company that sells electricity for consumption in the ~~[State]~~ state shall establish a renewable portfolio standard of:

- (1) Ten per cent of its net electricity sales by December 31, 2010;
- (2) Fifteen per cent of its net electricity sales by December 31, 2015; ~~[and]~~
- (3) ~~[Twenty]~~ Twenty-five per cent of its net electricity sales by December 31, 2020~~[-]; and~~
- (4) Forty per cent of its net electricity sales by December 31, 2030.

(b) The public utilities commission may establish standards for each utility that prescribe what portion of the renewable portfolio standards shall be met by specific types of renewable ~~[electrical]~~ energy resources; provided that:

- (1) ~~[At]~~ Prior to January 1, 2015, at least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source~~[-]~~, and after December 31, 2014, the entire renewable portfolio standard shall be met by electrical generation from renewable energy sources;
- (2) Beginning January 1, 2015, electrical energy savings shall not count toward renewable energy portfolio standards;
- [(2)] (3) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and
- [(3)] (4) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat input value represented by the heat input value of the renewable fuels.”



SECTION 4. Section 269-95, Hawaii Revised Statutes, is amended to read as follows:

**“§269-95 Renewable portfolio standards study.** The public utilities commission shall:

- (1) By December 31, 2007, develop and implement a utility ratemaking structure, which may include performance-based ratemaking, to provide incentives that encourage Hawaii’s electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the utility that could not have been reasonably anticipated or ameliorated;
- (2) Gather, review, and analyze empirical data to ~~[determine]~~:
  - (A) ~~Determine~~ the extent to which any proposed utility ratemaking structure would impact electric utility companies’ profit margins ~~[and to ensure]~~; and
  - (B) ~~Ensure~~ that the electric utility companies’ opportunity to earn a fair rate of return is not diminished;
- (3) ~~[Using]~~ Use funds from the public utilities special fund~~;~~ to contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, environmental groups, and other similar institutions with the required expertise. These studies shall include findings and recommendations regarding:
  - (A) The capability of Hawaii’s electric utility companies to achieve renewable portfolio standards in a cost-effective manner and shall assess factors such as ~~[the]~~:
    - (i) ~~The~~ impact on consumer rates~~[- utility]~~;
    - (ii) ~~Utility~~ system reliability and stability~~[- costs]~~;
    - (iii) ~~Costs~~ and availability of appropriate renewable energy resources and technologies~~[- permitting]~~;
    - (iv) ~~Permitting~~ approvals~~[- effects]~~;
    - (v) ~~Effects~~ on the economy~~[- balance]~~;
    - (vi) ~~Balance~~ of trade, culture, community, environment, land, and water~~[- climate]~~;
    - (vii) ~~Climate~~ change policies~~[- demographics]~~;
    - (viii) ~~Demographics~~~~[-]~~; and ~~[other]~~
    - (ix) ~~Other~~ factors deemed appropriate by the commission; and
  - (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;
- (4) ~~[Revise]~~ Evaluate the renewable portfolio standards every five years, beginning in 2013, and may revise the standards based on the best information available at the time ~~[if the results of the studies conflict with]~~ to determine if the [renewable portfolio] standards established by section 269-92[;] remain effective and achievable; and
- (5) Report its findings and revisions to the renewable portfolio standards, based on its own studies and ~~[those contracted under paragraph (3);]~~ other information to the legislature no later than twenty

days before the convening of the regular session of [2009,] 2014, and every five years thereafter.”

### PART III ENERGY RESOURCES COORDINATOR

SECTION 5. Section 196-4, Hawaii Revised Statutes, is amended to read as follows:

**“§196-4 Powers and duties.** Subject to the approval of the governor, the coordinator shall:

- (1) Formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the optimum development of Hawaii's energy resources;
- (2) Conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other organizations and recommend ~~[to the governor and to the legislature]~~ programs ~~[which]~~ that represent the most effective allocation of resources for the development of energy sources;
- (3) Formulate and recommend specific proposals, as necessary, for conserving energy and fuel, including the allocation and distribution thereof, ~~[to the governor and to the legislature];~~
- (4) Assist public and private agencies in implementing energy conservation and efficiency programs, the development of indigenous energy resources, and related measures;
- (5) Coordinate the State's energy ~~[conservation and allocation]~~ programs with ~~[that]~~ those of the federal government, other state governments, governments of nations with interest in common energy resources, and the political subdivisions of the State;
- (6) Develop programs to encourage private and public exploration ~~[and], research, and development of [alternative]~~ indigenous energy resources ~~[which]~~ that will benefit the State;
- (7) Conduct public education programs to inform the public of the energy situation as may exist from time to time and of the government actions taken thereto;
- (8) Serve as consultant to the governor, public agencies, and private industry on energy-related matters ~~[related to the acquisition, utilization and conservation of energy resources];~~
- (9) Contract for services when required for implementation of this chapter;
- (10) Review proposed state actions ~~[which]~~ that the coordinator finds to have significant effect on ~~[energy consumption]~~ the State's energy objectives and report to the governor their effect on the energy ~~[conservation]~~ program, and perform ~~[such]~~ other services as may be required by the governor and the legislature;
- (11) Prepare and submit an annual report and ~~[such]~~ other reports as may be requested to the governor and to the legislature on the implementation of this chapter and all matters related to energy resources; ~~[and]~~
- (12) Formulate a systematic process, including the development of requirements, to identify geographic areas that are rich with renewable energy resource potential that can be developed in a cost-effective

- and environmentally benign manner and designate these areas as renewable energy zones;
- (13) Develop and recommend incentives, plans, and programs to encourage the development of renewable energy resource projects within the renewable energy zones;
  - (14) Assist public and private agencies in identifying utility transmission projects or infrastructure required to accommodate and facilitate the development of renewable energy resources;
  - (15) Assist public and private agencies, in coordination with the department of budget and finance, in accessing the use of special purpose revenue bonds to finance the engineering, design, and construction of transmission projects and infrastructure that are deemed critical to the development of renewable energy resources;
  - (16) Develop the criteria or requirements for identifying and qualifying specific transmission projects and infrastructure that are critical to the development of renewable energy resources, including providing assistance in accessing the use of special purpose revenue bonds to finance the projects or infrastructure;
  - (17) Develop and maintain a comprehensive and systematic quantitative and qualitative capacity to analyze the status of energy resources, systems, and markets, both in-state and those to which Hawaii is directly tied, particularly in relation to the State's economy, and to recommend, develop proposals for, and assess the effectiveness of policy and regulatory decisions, and conduct energy emergency planning; and
  - [(12)] (18) Adopt rules for the administration of this chapter pursuant to chapter 91[, provided that the rules shall be submitted to the legislature for review]."

#### PART IV RENEWABLE ENERGY FACILITATOR

SECTION 6. Section 201-12.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The renewable energy facilitator shall have the following duties:
- (1) Facilitate the efficient permitting of renewable energy projects[;], including:
    - (A) The land parcel on which the facility is situated;
    - (B) Any renewable energy production structure or equipment;
    - (C) Any energy transmission line from the facility to a public utility's electricity system; and
    - (D) Any on-site infrastructure necessary for the production of electricity or biofuel from the renewable energy site;
  - (2) Initiate the implementation of key renewable energy projects by permitting various efficiency improvement strategies identified by the department;
  - (3) Administer the day-to-day coordination for renewable energy projects on behalf of the department and the day-to-day operations of the renewable energy facility siting process established in ~~[[Act 207, Session Laws of Hawaii 2008]]~~ chapter 201N; and
  - (4) Submit periodic reports to the legislature on renewable energy facilitation activities and the progress of the renewable energy facility siting process.”

## PART V RENEWABLE ENERGY PERMITTING

SECTION 7. Section 201N-1, Hawaii Revised Statutes, is amended by amending the definition of “renewable energy facility” or “facility” to read as follows:

““Renewable energy facility” or “facility” means a new facility located in the [State] state with the capacity to produce from renewable energy at least two hundred megawatts of electricity[-]; provided that an electricity production facility with a capability between five megawatts and one hundred ninety-nine megawatts of electricity and a biofuel production facility with a capacity to produce one million gallons or more annually may apply to the coordinator for designation as a renewable energy facility. The term includes any of the following associated with the initial permitting and construction of the facility:

- (1) The land parcel on which the facility is situated;
- (2) Any renewable energy production structure or equipment;
- (3) Any energy transmission line from the facility to a public utility’s electricity transmission or distribution system;
- (4) Any on-site infrastructure; and
- (5) Any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site, transmission of the electricity or biofuel, or any accommodation for employees of the facility.”

SECTION 8. Section 201N-4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Each appropriate state and county agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If the coordinator has given at least thirty days written notice stating that the permit plan application is subject to this section and a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency, within thirty days following the end of the twelve-month period, shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and take action as soon as practicable. If no further processing and action are reported by the permitting agency within five months following the end of the thirty-day agency report period, the coordinator may deem the permit approved. If a permitting agency fails to provide this report identifying diligent measures and if the permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by the coordinator, the permit shall be deemed approved.”

SECTION 9. There is appropriated out of the renewable energy facility siting special fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of the renewable energy facility siting special fund as set forth in section 201N-11, Hawaii Revised Statutes.

## PART VI ENERGY EFFICIENCY

**SECTION 10.** In January 2008, the United States Department of Energy and the State of Hawaii signed a memorandum of understanding to strengthen cooperation to implement clean energy technologies that will increase energy-efficiency and maximize use of the State's vast and abundant renewable resources. The legislature finds that the establishment of this long-term partnership, called the Hawaii Clean Energy Initiative, is designed to transform Hawaii's energy system into one that uses renewable energy and energy-efficient technologies for a significant portion of its energy needs. The partnership aims to put Hawaii on a path to supply seventy per cent of its energy needs using clean energy by 2030, which can significantly reduce Hawaii's current crude oil consumption. This type of clean energy transformation will help to stabilize and strengthen Hawaii's economy by reducing its dependency on imported fossil fuels and protect its environment by sharply reducing greenhouse gas emissions.

The United States Department of Energy, as a leader in clean energy technologies, is working with the State of Hawaii to further the potential of its natural resources, including wind, sun, and bioenergy resources, and engage experts in clean energy technology development to help Hawaii launch projects in conjunction with public and private sector partners that target opportunities and address critical needs for Hawaii's transition to a clean energy economy, including:

- (1) Designing cost-effective approaches for the exclusive use of renewable energy on smaller islands;
- (2) Designing systems to improve the stability of electric grids operating with variable generating sources, such as wind power plants on the islands of Hawaii and Maui;
- (3) Minimizing energy use while maximizing energy-efficiency and renewable energy technologies at new large military housing developments;
- (4) Expanding Hawaii's capability to use locally-grown crops and by-products for producing fuel and electricity; and
- (5) Assisting in the development of comprehensive energy regulatory and policy frameworks for promoting clean energy technology use.

Similar to the establishment of a renewable energy portfolio standard, an energy-efficiency portfolio standard sets a target of electricity-use reduction to be achieved in incremental stages, as end-use energy-efficiency programs can make a significant and cost-effective contribution to achieving the goals and objectives of the Hawaii Clean Energy Initiative.

The purpose of this part is to maximize cost-effective energy-efficiency programs and technologies to achieve electricity-use reductions to the maximum extent feasible by establishing an energy-efficiency portfolio standard, making public buildings more energy-efficient, disclosing a property's energy consumption at the time of sale, and establishing a building energy efficiency revolving loan fund, to achieve electricity use reductions to the maximum extent feasible.

**SECTION 11.** The Hawaii Revised Statutes is amended by adding three new sections to be appropriately designated and to read as follows:

**“§ - Energy-efficiency portfolio standards.** (a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-effective energy-efficiency programs and technologies.

(b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030; provided that the commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025 and may also adjust the 2030 standard by rule or order to maximize cost-effective energy-efficiency programs and technologies.

(c) The commission may establish incentives and penalties based on performance in achieving the energy-efficiency portfolio standards by rule or order.

(d) The public utilities commission shall evaluate the energy-efficiency portfolio standard every five years, beginning in 2013, and may revise the standard, based on the best information available at the time, to determine if the energy-efficiency portfolio standard established by this section remains effective and achievable. The commission shall report its findings and revisions to the energy-efficiency portfolio standard, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

(e) Beginning in 2015, electric energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating and seawater air conditioning district cooling systems, shall count toward this standard.

**§ - Public buildings; benchmarks; retro-commissioning guidelines; energy savings performance contracts.** (a) By December 31, 2010, each state department with responsibilities for the design and construction of public buildings and facilities shall benchmark every existing public building that is either larger than five thousand square feet or uses more than eight thousand kilowatt-hours of electricity or energy per year and shall use the benchmark as a basis for determining the State's investment in improving the efficiency of its own building stock. Benchmarking shall be conducted using the ENERGY STAR portfolio management or equivalent tool. The energy resources coordinator shall provide training to affected departments on the ENERGY STAR portfolio management or equivalent tool.

(b) Public buildings shall be retro-commissioned no less often than every five years. The energy resources coordinator shall establish retro-commissioning guidelines by January 1, 2010.

(c) Departments may enter into energy savings performance contracts with a third party to cover the capital costs of energy-efficiency measures and distributed generation provided the terms of the energy savings performance contracts conform to the benchmark standard. The comptroller may review and exempt specific projects as appropriate to take into account cost-effectiveness.

Energy savings performance contracts shall be executed according to state guidelines issued by the comptroller, and the contracts shall be reviewed by the comptroller. To expedite energy savings performance contracting for public buildings, the department of accounting and general services shall develop a master energy savings performance contracts agreement that any department may use to contract with an energy savings performance contracts provider for energy-efficiency and renewable energy services.

(d) For existing public buildings that undergo a major retrofit or renovation, the department or departments responsible for design and construction shall make investments in efficiency; provided that the cost of the measures shall be recouped within twenty years.

**§ - Energy-efficiency consumer information in sale or lease of real property.** Prior to the sale of residential real property, the property owner shall make a good faith declaration of electricity cost based on the most recent three-month period in which the property was occupied prior to the date of the seller's disclosure, pursuant to chapter 508D. This declaration shall only apply where the owner directly pays the electrical utility bills, and shall not apply in the case of a foreclosure of residential real property or where there are no electrical utility accounts associated with the property."

SECTION 12. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§201- Building energy efficiency revolving loan fund.** (a) There is established in the state treasury the building energy efficiency revolving loan fund which shall be administered by the department, and into which shall be deposited:

- (1) Funds from federal, state, county, private, or other funding sources;
- (2) Moneys received as repayment of loans and interest payments; and
- (3) Any fees collected by the department under this section.

(b) Moneys in the building energy efficiency revolving loan fund shall be used to provide low or no interest loans or other authorized financial assistance to eligible public, private, and nonprofit borrowers to make energy efficiency improvements in buildings. Moneys from the fund may be used to cover administrative and legal costs of fund management and management associated with individual loans, to include personnel, services, technical assistance, data collection and reporting, materials, equipment, and travel for the purposes of this section.

(c) Appropriations or authorizations from the fund shall be expended by the department. The department may contract with other public or private entities for the provision of all or a portion of the services necessary for the administration and implementation of the loan fund program. The department may set fees or charges for fund management and technical site assistance provided under this section. The department may adopt rules pursuant to chapter 91 to carry out the purposes of this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

(e) The department may establish subaccounts within the fund as necessary."

## PART VII SOLAR WATER HEATER SYSTEM

SECTION 13. It is the intent of the legislature that the variances provided for in Act 204, Session Laws of Hawaii 2008, (Act 204) will be rarely, if ever, exercised or granted because the burden of proof will lie with the applicant to demonstrate that a solar water heater system, regardless of location or circumstance, is not cost effective in the context of a thirty-year mortgage term. This requires the use of realistic assumptions regarding interest rates, discount rates, inflation rates, and the expected average cost of electricity by island over the thirty-year period, regardless of the cost of electricity, or of oil or other fossil fuels, at a specific time.

The legislature finds that it is necessary to clarify the intent of the variance provision that allows for a demand water heater device. There is the poten-

tial that this provision may be used to allow a developer/builder, the purchaser of a water heating device, of a single-family dwelling, to circumvent the policy objectives of Act 204.

In its deliberation of Act 204, the legislature found that the installation of a solar water heater system will only occur if the developer or builder was able to recover the cost of the investment from the consumer, who ultimately enjoys the energy savings. Therefore, a solar water heater mandate was necessary to ensure that an energy savings could be realized by the consumer, without which the housing market would be sensitive to certain price points that do not factor in the cost-effectiveness of energy efficiency devices that reduce the overall energy cost of a home to benefit the consumer.

The legislature further found that retrofitting a home for a solar water heater after it was constructed was more costly, and that such upfront costs, despite incentives such as state and federal tax credits and utility rebates, were substantial barriers for the average consumer. The financial barriers can be addressed, however, by including the installation of a solar water heater into the purchase price and mortgage of a home, where the cost of the system may pay for itself immediately.

Therefore, the legislature intended for a consumer to have the option to use gas appliances with the full knowledge that such a system may be more costly and less efficient. To obviate any attempt to circumvent Act 204, then, the legislature intends that if the potential variance applicant is not the party who will ultimately pay for the energy cost consumption, then only paragraph (1), (2), or (3) of subsection (a) in section 196-6.5, Hawaii Revised Statutes, should apply.

Additionally, the legislature finds that the continuation of the renewable energy income tax credit needs to remain available for all homes built before January 1, 2010.

The purpose of this part, is to clarify the provisions of Act 204, to carry out the legislature's intent.

SECTION 14. Section 196-6.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) On or after January 1, 2010, no building permit shall be issued for a new single-family dwelling that does not include a solar water heater system that meets the standards established pursuant to section 269-44, unless the energy resources coordinator approves a variance. A variance application shall only be [approved] accepted if submitted by an architect or mechanical engineer licensed under chapter 464, who attests that:

- (1) Installation is impracticable due to poor solar resource;
- (2) Installation is cost-prohibitive based upon a life cycle cost-benefit analysis that incorporates the average residential utility bill and the cost of the new solar water heater system with a life cycle that does not exceed fifteen years;
- (3) A [substitute] renewable energy technology system, as defined in section 235-12.5, is [used] substituted for use as the primary energy source for heating water; or
- (4) A demand water heater device approved by Underwriters Laboratories, Inc., is installed; provided that at least one other gas appliance is installed in the dwelling. For the purposes of this paragraph, "demand water heater" means a gas-tankless instantaneous water heater that provides hot water only as it is needed.

(b) A request for a variance shall be submitted to the energy resources coordinator on an application prescribed by the energy resources coordinator



and shall include~~[, but not be limited to,]~~ a description of the location of the property and justification for the approval of a variance using the criteria established in subsection (a). A variance shall be deemed approved if not denied within thirty working days after receipt of the variance application. The energy resources coordinator shall publicize:

- (1) All applications for a variance within seven days after receipt of the variance application; and
- (2) The disposition of all applications for a variance within seven days of the determination of the variance application."

SECTION 15. Section 235-12.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the requirements of subsection (c) are met, each individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the [State] state by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service in the [State] state after June 30, 2003. The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
  - (A) Single-family residential property for which a building permit for a single-family dwelling was issued prior to January 1, 2010: thirty-five per cent of the actual cost or \$2,250, whichever is less;
  - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
  - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less;
- (2) Wind-powered energy systems for:
  - (A) Single-family residential property: twenty per cent of the actual cost or \$1,500, whichever is less; provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a) (3), the credit shall be reduced by twenty per cent of the actual system cost or \$1,500, whichever is less;
  - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
  - (C) Commercial property: twenty per cent of the actual cost or \$500,000, whichever is less; and
- (3) Photovoltaic energy systems for:
  - (A) Single-family residential property: thirty-five per cent of the actual cost or \$5,000, whichever is less; provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a) (3), the credit shall be reduced by thirty-five per cent of the actual system cost or \$2,250, whichever is less;
  - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
  - (C) Commercial property: thirty-five per cent of the actual cost or \$500,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service in the [State] state by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a)."

## PART VIII PUBLIC BENEFITS FEE ADMINISTRATOR

SECTION 16. Section 269-122, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The public utilities commission may contract with a third-party administrator, to operate and manage any programs established under section 269-121. The administrator shall not be deemed to be a "governmental body" as defined in section 103D-104; provided that all moneys transferred to the third-party administrator shall be comprised solely of public benefit fees collected pursuant to section 269-121[-] or from funds provided by the federal government or by private funding sources. The administrator shall not expend more than ten per cent of the collected public benefits fees in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-121."

## PART IX HAWAII STATE PLANNING ACT

SECTION 17. Section 226-18, Hawaii Revised Statutes, is amended to read as follows:

**"§226-18 Objectives and policies for facility systems—energy.** (a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:

- (1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
- (2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
- (3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and
- (4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

(b) To achieve the energy objectives, it shall be the policy of this State to ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.

(c) To further achieve the energy objectives, it shall be the policy of this State to:

- (1) Support research and development as well as promote the use of renewable energy sources;
- (2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;
- (3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;

- (4) Promote all cost-effective conservation of power and fuel supplies through measures, including:
  - (A) Development of cost-effective demand-side management programs;
  - (B) Education; and
  - (C) Adoption of energy-efficient practices and technologies;
- (5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;
- (6) Support research, development, ~~[and]~~ demonstration, and use of energy efficiency, load management, and other demand-side management programs, practices, and technologies;
- (7) Promote alternate fuels and transportation energy efficiency ~~[by encouraging diversification of transportation modes and infrastructure];~~
- (8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;
- (9) Support actions that reduce, avoid, or sequester Hawaii's greenhouse gas emissions through agriculture and forestry initiatives; and
- (10) Provide priority handling and processing for all state and county permits required for renewable energy projects."

## PART X MISCELLANEOUS

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 2009.

(Approved June 25, 2009.)

## ACT 156

S.B. NO. 1202

A Bill for an Act Relating to Transportation Energy Initiatives.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii must take bold steps toward reducing its dependence on imported fossil fuels. The State imports ninety-five per cent of its energy, most of which comes from petroleum and coal. Eighty-nine per cent of Hawaii's energy is derived from petroleum and six per cent is derived from coal. Of all the energy consumed in the State, about forty per cent is used for transportation purposes, compared with eight per cent for residential uses, ten per cent for commercial uses, twenty-five per cent for generating electric power, and sixteen per cent for industrial uses.

The legislature finds, therefore, that it is essential for the State to aggressively promote and develop alternatives to fossil fuel modes of transportation. Alternative fuel and electric vehicles are a viable solution. Electrification of transportation creates jobs, fosters economic growth, reduces greenhouse gas emissions, and stems the effects of climate change in Hawaii.

The legislature also finds that developing an electric vehicle infrastructure is a first and essential step toward the transformation of transportation in Hawaii. With developing technology, along with a push by national and international

automakers to expedite the production and supply of electric vehicles, Hawaii must be ready to embrace a new generation of highway transportation.

The purpose of this Act is to provide sufficient tools to develop an infrastructure for electric vehicles in Hawaii. Accordingly, this Act requires government agencies to lead the way in the electrification of transportation in the State, providing an aggressive but realistic timetable to replace fossil fuel vehicles with electric and alternative fuel vehicles.

## PART I PLANNING AND POLICY PRIORITIES

SECTION 2. Section 226-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the potential growth activity objective, it shall be the policy of this State to:

- (1) Facilitate investment and employment in economic activities that have the potential for growth such as diversified agriculture, aquaculture, apparel and textile manufacturing, film and television production, and energy and marine-related industries[-];
- (2) Expand Hawaii’s capacity to attract and service international programs and activities that generate employment for Hawaii’s people[-];
- (3) Enhance and promote Hawaii’s role as a center for international relations, trade, finance, services, technology, education, culture, and the arts[-];
- (4) Accelerate research and development of new energy-related industries based on wind, solar, ocean, and underground resources and solid waste[-];
- (5) Promote Hawaii’s geographic, environmental, social, and technological advantages to attract new economic activities into the State[-];
- (6) Provide public incentives and encourage private initiative to attract new industries that best support Hawaii’s social, economic, physical, and environmental objectives[-];
- (7) Increase research and the development of ocean-related economic activities such as mining, food production, and scientific research[-];
- (8) Develop, promote, and support research and educational and training programs that will enhance Hawaii’s ability to attract and develop economic activities of benefit to Hawaii[-];
- (9) Foster a broader public recognition and understanding of the potential benefits of new, growth-oriented industry in Hawaii[-];
- (10) Encourage the development and implementation of joint federal and state initiatives to attract federal programs and projects that will support Hawaii’s social, economic, physical, and environmental objectives[-];
- (11) Increase research and development of businesses and services in the telecommunications and information industries[-]; and
- (12) Foster the research and development of nonfossil fuel and energy efficient modes of transportation.”

SECTION 3. Section 226-18, Hawaii Revised Statutes, is amended to read as follows:

**“§226-18 Objectives and policies for facility systems—energy.** (a) Planning for the State’s facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:

- (1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
- (2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
- (3) Greater energy security and diversification in the face of threats to Hawaii’s energy supplies and systems; and
- (4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

(b) To achieve the energy objectives, it shall be the policy of this State to ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.

(c) To further achieve the energy objectives, it shall be the policy of this State to:

- (1) Support research and development as well as promote the use of renewable energy sources;
- (2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;
- (3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;
- (4) Promote all cost-effective conservation of power and fuel supplies through measures, including:
  - (A) Development of cost-effective demand-side management programs;
  - (B) Education; and
  - (C) Adoption of energy-efficient practices and technologies;
- (5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;
- (6) Support research, development, [and] demonstration, and use of energy efficiency, load management, and other demand-side management programs, practices, and technologies;
- (7) Promote alternate fuels and transportation energy efficiency ~~[by encouraging diversification of transportation modes and infrastructure];~~
- (8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;
- (9) Support actions that reduce, avoid, or sequester Hawaii’s greenhouse gas emissions through agriculture and forestry initiatives; and
- (10) Provide priority handling and processing for all state and county permits required for renewable energy projects.”

## PART II BUSINESS INCENTIVES AND REQUIREMENTS

SECTION 4. Chapter 291, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§291-A Designation of parking spaces for electric vehicles; charging units.**

All public, private, and government parking facilities that are available for use by the general public and have at least one hundred parking spaces shall designate one per cent of parking spaces exclusively for electric vehicles by December 31, 2011, provided that at least one of the parking spaces designated for electric vehicles is located near the building entrance and is equipped with an electric vehicle charging unit. Spaces shall be designated, clearly marked, and the exclusive designation enforced. The electric vehicle charging units shall meet recognized standards, including SAE J1772 of the Society of Automotive Engineers. Owners of multiple parking lots within the State may designate and electrify fewer parking spaces than required in one or more of their owned properties as long as the scheduled requirement is met for the total number of aggregate spaces on all of their owned properties.

When the number of registered electric vehicles in the State reaches five thousand, the spaces designated for electric vehicles shall increase to two per cent of parking spaces. The number of spaces designated for electric vehicles shall continue to increase by one per cent for each additional five thousand electric vehicles registered in the State until the percentage reaches ten per cent of parking spaces.

For the purposes of this section, “electric vehicle” means an electric vehicle or neighborhood electric vehicle with an electric vehicle license plate.

**§291-B Parking spaces reserved for electric vehicles; penalties.** (a) Beginning January 1, 2012, any person who parks a non-electric vehicle in a space designated and marked as reserved for electric vehicles shall receive a warning.

(b) Beginning July 1, 2013, any person who parks a non-electric vehicle in a space designated and marked as reserved for electric vehicles shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$50 nor more than \$100, and shall pay any costs incurred by the court related to assessing the fine.

(c) Any citation issued under this section may be mailed to the violator pursuant to section 291C-165(b).”

SECTION 5. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “public utility” to read as follows:

““Public utility”:

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term shall include:
  - (A) Any person insofar as that person owns or operates a private sewer company or sewer facility; and
  - (B) Any telecommunications carrier or telecommunications common carrier;
- (2) Shall not include:

- (A) Any person insofar as that person owns or operates an aerial transportation enterprise;
- (B) Persons owning or operating taxicabs, as defined in this section;
- (C) Common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
- (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
- (E) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (G) Any person who:
  - (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
  - (ii) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;
- (H) A telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9;
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose;
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
  - (i) The services of the facility shall be provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the State or county which has entered into the service contract;
  - (ii) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;
  - (iii) The facility shall not make sales of water to residential customers;
  - (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" [mean]

means treated wastewater that by design is intended or used for a beneficial purpose; and

- (v) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes; ~~and~~
- (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater[-]; and
- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion.

If the application of this chapter is ordered by the commission in any case provided in paragraphs (2)(C), (2)(D), (2)(H), and (2)(I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the commission may prescribe, as provided in sections 269-16.9 and 269-20.”

### PART III GOVERNMENT AGENCY REQUIREMENTS

SECTION 6. Section 103D-412, Hawaii Revised Statutes, is amended to read as follows:

“§103D-412 [Energy-efficient vehicles.] Light-duty motor vehicle requirements. (a) The procurement policy for all agencies purchasing or leasing light-duty motor vehicles shall be to ~~[obtain energy-efficient vehicles. All covered fleets are directed to procure increasing percentages of energy-efficient vehicles as part of their annual vehicle acquisition plans, which shall be as follows:~~

- (1) ~~In the fiscal year beginning July 1, 2006, at least twenty per cent of newly purchased light-duty vehicles acquired by each covered fleet shall be energy-efficient vehicles;~~
- (2) ~~In the fiscal year beginning July 1, 2007, at least thirty per cent of newly purchased light-duty vehicles acquired by each covered fleet shall be energy-efficient vehicles;~~
- (3) ~~In the fiscal year beginning July 1, 2008, at least forty per cent of newly purchased light-duty vehicles acquired by each covered fleet shall be energy-efficient vehicles; and~~
- (4) ~~For each subsequent fiscal year, the percentage of energy-efficient vehicles newly purchased shall be five percentage points higher than the previous year, until at least seventy-five per cent of each covered fleet's newly purchased, light-duty vehicles are energy-efficient vehicles.]~~

reduce dependence on petroleum for transportation energy.

(b) Beginning January 1, 2010, all state and county entities, when purchasing new vehicles, shall seek vehicles with reduced dependence on petroleum-based fuels that meet the needs of the agency. Priority for selecting vehicles shall be as follows:

- (1) Electric or plug-in hybrid electric vehicles;
- (2) Hydrogen or fuel cell vehicles;
- (3) Other alternative fuel vehicles;
- (4) Hybrid electric vehicles; and



- (5) Vehicles that are identified by the United States Environmental Protection Agency in its annual "Fuel Economy Leaders" report as being among the top performers for fuel economy in their class.

~~[(b)]~~ (c) For the purposes of this section:

"Agency" means a state agency, office, or department.

"Alternative fuel" ~~[has the same meaning as contained in 10 Code of Federal Regulations Part 490-]~~ means alcohol fuels, mixtures containing eighty-five per cent or more by volume of alcohols with gasoline or other fuels, natural gas, liquefied petroleum gas, hydrogen, biodiesel, mixtures containing twenty per cent or more by volume of biodiesel with diesel or other fuels, other fuels derived from biological materials, and electricity provided by off-board energy sources.

"Covered fleet" has the same meaning as contained in 10 Code of Federal Regulations Part 490 Subpart C.

~~["Energy efficient vehicle" means a vehicle that:~~

- ~~(1) Is capable of using an alternative fuel;~~
- ~~(2) Is powered primarily through the use of an electric battery or battery pack that stores energy produced by an electric motor through regenerative braking to assist in vehicle operation;~~
- ~~(3) Is propelled by power derived from one or more cells converting chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form;~~
- ~~(4) Draws propulsion energy from onboard sources of stored energy generated from an internal combustion or heat engine using combustible fuel and a rechargeable energy storage system; or~~
- ~~(5) Is on the list of "Most Energy Efficient Vehicles" in its class or is in the top one fifth of the most energy efficient vehicles in its class available in Hawaii as shown by vehicle fuel efficiency lists, rankings, or reports maintained by the United States Environmental Protection Agency.]~~

"Excluded vehicles" has the same meaning as provided in 10 Code of Federal Regulations Section 490.3.

"Light-duty motor vehicle" has the same meaning as contained in 10 Code of Federal Regulations Part 490[-], not including any vehicle incapable of traveling on highways or any vehicle with a gross vehicle weight rating greater than eight thousand five hundred pounds.

~~[(c) Agencies may offset energy-efficient vehicle purchase requirements by successfully demonstrating percentage improvements in overall light-duty vehicle fleet mileage economy. The offsets shall be measured against the fleet average miles per gallon of petroleum-based gasoline and diesel fuel, using the fiscal year beginning July 1, 2006, as a baseline, on a percentage-by-percentage basis.~~

~~(d) Agencies that use biodiesel fuel may offset the vehicle purchase requirements of this section at the rate of one vehicle for each four hundred fifty gallons of neat biodiesel fuel used. Neat biodiesel fuel is one hundred per cent biodiesel (B100) by volume.~~

~~(e)]~~ (d) Agencies may apply to the chief procurement officer for exemptions from the requirements of this section to the extent that the vehicles required by this section are not available or do not meet the specific needs of the agency[-]; provided that life cycle vehicle and fuel costs may be included in the determination of whether a particular vehicle meets the needs of the agency. Estimates of future fuel costs shall be based on projections from the United States Energy Information Administration.

~~[(f)]~~ (e) Vehicles acquired from another state agency and excluded vehicles are exempt from the requirements of this section.

~~[(e)] (f)~~ Nothing in this section is intended to interfere with ~~[an agency's]~~ the ability of a covered fleet to comply with ~~[federally imposed]~~ the vehicle purchase mandates [such as those] required by 10 Code of Federal Regulations Part 490 Subpart C."

SECTION 7. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

- (1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
- (2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports; ~~or~~
- (3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles~~[-]; or~~
- (4) Any request from the energy resources coordinator to track the number and type of vehicles in use and the effectiveness of efforts to increase the efficiency and diversify the fuel needs of Hawaii's transportation sector."

#### PART IV TRANSPORTATION ENERGY TRANSFORMATION GRANT FUND PROGRAM

SECTION 8. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201- Transportation energy transformation grant fund; electric vehicles.**

(a) There is established within the state treasury the transportation energy transformation grant fund, to be administered and expended by the department, into which shall be deposited:

- (1) Appropriations made by the legislature;
- (2) Gifts, grants, and other public and private funds;
- (3) Any federal funds; and
- (4) All interest and revenue of receipts derived from the fund.
- (b) The moneys in the fund shall be used by the department to:
  - (1) Provide grants for the acquisition of electric vehicles;
  - (2) Provide grants for the installation of electric vehicle charging infrastructure that is in compliance with all state laws and capable of being intelligently integrated with the electrical grid;
  - (3) Provide grants for innovative programs that diversify transportation energy sources or that help coordinate activities that will help to diversify transportation energy sources in the State;
  - (4) Establish and fill two temporary positions to carry out the purposes of this part; and

- (5) Pay for any administrative, operational, training, and marketing costs associated with the transportation energy transformation grant program.
- (c) Applications for grants shall be made to the department and shall be for any or all of the following:
  - (1) The acquisition of one or more new electric vehicles licensed and intended for use on Hawaii's highways; provided that the electric vehicles are:
    - (A) Intended to be charged primarily by renewable energy sources; or
    - (B) Able to be integrated intelligently with the electrical grid;
  - (2) Electric vehicle charging infrastructure; and
  - (3) Innovative programs that diversify transportation energy sources or that help coordinate activities that will help to diversify transportation energy sources in the State.
  - (d) A grant may be made to an applicant only if the applicant has:
    - (1) Met the specifications and requirements established by the director for the grant program;
    - (2) Filed a completed application form, as prescribed by the director, together with all supporting documentation required by the director;
    - (3) Completed the purchase or lease, licensing, and registration of one or more vehicles, prior to applying for one or more electric vehicle grants;
    - (4) Provided any other information deemed necessary by the director; and
    - (5) Met any additional requirements of the grant program as determined by the director.
  - (e) Disbursements from the transportation energy transformation grant fund shall not be subject to chapter 42F.
  - (f) The director shall include information on the transportation energy transformation grant fund, and statistical information on program participation, in the department's annual report to the governor and the legislature.
  - (g) The director may adopt rules pursuant to chapter 91 to govern all aspects of the transportation energy transformation grant fund program.
  - (h) As used in this section:

"Director" means the director of business, economic development, and tourism.

"Electric vehicle" has the same meaning as contained in Section 30D of the Internal Revenue Code for "new qualified plug-in electric drive motor vehicle".

"Electric vehicle charging infrastructure" means structures, machinery, and equipment necessary to support an electric vehicle, including battery charging stations and battery exchange stations.

"Integrated intelligently with the electrical grid" means that the demand of the electric vehicle for electricity from the grid is controlled to enable reduction of the vehicle's electrical demand on the grid during peak demand times and to enable maximum use of renewable energy sources, baseload energy sources, or renewable energy potentially available off peak that would otherwise be curtailed."

**SECTION 9.** There is appropriated out of available and appropriated federal funds the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 to be deposited into the transportation energy trans-

formation grant fund; provided that this section shall only take effect upon a determination by the department of business, economic development, and tourism that federal funds that may be appropriately expended for the purposes of this part are available.

SECTION 10. There is appropriated out of the transportation energy transformation grant fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 for the purposes of this part; provided that this section shall only take effect upon a determination by the department of business, economic development, and tourism that federal funds that may be appropriately expended for the purposes of this part are available.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

SECTION 11. There are established within the department of business, economic development, and tourism two full-time, temporary positions, exempt from chapters 76 and 89, Hawaii Revised Statutes, to carry out the purposes of this part.

## PART V MISCELLANEOUS

SECTION 12. In codifying the new sections added by section 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect on July 1, 2009; provided that section 8 shall be repealed on June 30, 2013.

(Approved June 25, 2009.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 157

S.B. NO. 1065

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 227D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§227D- Renewable energy sales; exemption.** (a) The authority shall be exempt from the definition of “public utility” under section 269-1 and shall be exempt from regulation by the public utilities commission for the sale or provision of electricity generated by the authority using renewable energy as its source in facilities located at the authority’s research and technology park; provided

that all sales or provisions of electricity are made directly to a user located adjacent to the authority's research and technology park on lands leased by the user from the State; and provided further that connection to the electrical grid shall not be required to provide any electricity to any user.

(b) If the sale or provision of any electricity generated by the authority requires connection to the electrical grid to transmit electricity to any user, then the authority shall be deemed to be a public utility as defined in section 269-1 and shall be subject to regulation by the public utilities commission. If the sale or provision of any electricity generated by the authority requires connection to the electrical grid, the authority shall be subject to any interconnection agreement or other agreement required by an electric utility or by the public utilities commission.

As used in this section, "renewable energy" shall have the same meaning as in section 269-91."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon approval.

(Approved June 26, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 158

H.B. NO. 1415

A Bill for an Act Relating to Service of Process.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 421I, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§421I- Service of process.** The board of directors of the corporation shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634- ."

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§421J- Service of process.** The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634- ."

SECTION 3. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§514A- Service of process.** The board of directors shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634- ."

SECTION 4. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514B- Service of process.** The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634- .”

SECTION 5. Chapter 634, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§634- Service of process within a condominium, cooperative housing, or planned community.** (a) Each board of directors of an association of apartment owners governed by chapter 514A or 514B, cooperative housing corporation governed by chapter 421I, and planned community association governed by chapter 421J shall establish, if entry to the property is inaccessible to the general public, a policy to provide reasonable access as specified in subsection (b) to the building or community to persons authorized to serve civil process for the purpose of serving any summons, subpoena, notice, or order on a person who is identified by the document being served as residing or present in the condominium, cooperative housing project, or planned community.

(b) The policy established pursuant to subsection (a) shall:

- (1) Subject to any conditions as may be specified in accordance with paragraph (4), allow a person authorized to serve civil process to access common areas adjacent to a principal entry to the residence specified in accordance with paragraph (2) for the sole purpose of attempting to effect service of process;
- (2) Require that a person authorized to serve civil process present clear personal identification and evidence that the person is authorized to serve process, including documentation clearly indicating the precise name and address, and if applicable, a unit number, of the person residing or present on the property to be served;
- (3) Allow for denial of access to the person authorized to serve civil process if the person is unable to produce clear and credible identification and documentation as required in paragraph (2);
- (4) Set forth conditions of time and manner according to which a person authorized to serve civil process may enter and remain in the building or community, and allow a person designated in accordance with paragraph (5) to compel a person authorized to serve civil process, who has been allowed access to the building or community but who has not acted in accordance with the conditions, to leave the building or community immediately; and
- (5) Designate an individual, by title or position, such as a resident manager, a building manager who is located in or reasonably near the building or community, or another person who is generally available to respond to a request for access during normal business hours in a timely manner, and at least one alternate individual if the primary designee is unavailable, to respond to a request for access by a person authorized to serve civil process.

(c) An association of apartment owners governed by chapter 514A or 514B, a cooperative housing corporation governed by chapter 421I, or a planned community association governed by chapter 421J shall not be liable to:

- (1) Any person if, after access is allowed to the building or community in accordance with this chapter, service of civil process is not actually effected for whatever reason; and
- (2) A person upon whom service of process is actually effected in accordance with this chapter.

(d) As of January 1, 2010, each board of directors of an association of apartment owners of a condominium shall identify the designees specified in subsection (b)(5) in its biennial registration. A cooperative housing corporation or planned community association shall make a printed copy of the policy required by this chapter available at all times at the principal point of entry to the building or community.”

SECTION 6. The department of commerce and consumer affairs shall adopt or amend forms and shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to implement this Act.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on January 1, 2010, and shall be repealed on July 1, 2012.

(Approved June 26, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 159

H.B. NO. 1512

A Bill for an Act Relating to Temporary Restraining Orders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Upon petition to a family court judge, an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time the order is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the protected party’s residence; or
- (3) Entering or visiting the protected party’s residence.

The ex parte temporary restraining order may also enjoin or restrain both of the parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court.”

2. By amending subsection (c) to read:

“(c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is

necessary for the purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse and ensuring a period of separation of the parties involved. The order shall also describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order~~[-and also];~~ may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members~~[-];~~ and may enjoin or restrain both parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the protected party's residence; ~~[or]~~
- (3) Entering or visiting the protected party's residence~~[-];~~ or
- (4) Taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2010.

(Approved June 26, 2009.)

## ACT 160

S.B. NO. 1222

A Bill for an Act Relating to the Humane Treatment of Pet Animals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 711-1109, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

"(1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

- (a) Overdrives, overloads, tortures, torments, beats, causes substantial bodily injury, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal~~[-or deprives];~~
- (b) Deprives a pet animal of necessary sustenance or causes such deprivation;
- ~~[(b)]~~ (c) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests;
- ~~[(e)]~~ (d) Keeps, uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, cock, or other animal, and includes every person who en-



courages, aids, or assists therein, or who permits or suffers any place to be so kept or used;

[(d)] (e) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner; [or]

(f) Confines or causes to be confined, in a kennel or cage, any pet animal in a cruel or inhumane manner;

(g) Tethers, fastens, ties, or restrains a dog to a dog house, tree, fence, or any other stationary object by means of a choke collar, pinch collar, or prong collar; provided that a person is not prohibited from using such restraints when walking a dog with a hand-held leash or while a dog is engaged in a supervised activity; or

[(e)] (h) Assists another in the commission of any act specified in subsections (1)(a) through [(4)(d)] (1)(g).

(2) Subsection (1)(a), (b), [(d), and] (c), (e),<sup>1</sup> (f), (g), and (h) shall not apply to:

- (a) Accepted veterinary practices;
- (b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or
- (c) Pest control operations conducted pursuant to chapter 149A by a pest control operator licensed pursuant to chapter 460J, if the pest control is performed under a written contract.”

SECTION 2. Section 711-1109.6, Hawaii Revised Statutes, is amended by amending subsection (1)<sup>2</sup> to read as follows:

“~~[[§711-1109.6]]~~ **Animal hoarding.** (1) A person commits the offense of animal hoarding if the person intentionally, knowingly, or recklessly:

- (a) Possesses more than [~~twenty~~] fifteen dogs, cats, or a combination of dogs and cats;
- (b) Fails to provide necessary sustenance for each dog or cat; and
- (c) Fails to correct the conditions under which the dogs or cats are living, where conditions injurious to the dogs’, cats’, or owner’s health and well-being result from the person’s failure to provide necessary sustenance.”

SECTION 3. Act 128, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, [~~2011~~] 2015.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 26, 2009.)

#### Notes

- 1. The comma should not be underscored.
- 2. So in original.

A Bill for an Act Relating to Starlight Reserve.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. (a) The legislature finds that the Declaration in Defense of the Night Sky and the Right to Starlight was approved at the starlight conference, held on the island of La Palma in April 2007. The declaration constituted the general and conceptual framework of the starlight initiative. The proposal to develop a starlight reserve concept was one of the additional recommendations to the starlight declaration to be carried out in cooperation with the World Heritage Center. Subsequently, an action plan was developed based on the principles of:

- (1) Recognizing the importance of promoting the Declaration in Defense of the Night Sky and the Right to Starlight through the different United Nations Educational, Scientific and Cultural Organization (UNESCO) programs and initiatives within the framework of the UNESCO conventions;
  - (2) Recognizing that light pollution must be considered as an imminent threat to the environment, as well as that climate change poses a threat to the outstanding universal values of world heritage sites;
  - (3) Recognizing that the preservation of dark skies is an important and necessary part in the process of the protection and safeguarding of natural and cultural properties worldwide; and
  - (4) Following the call of the UNESCO Director-General for an integrated approach to issues of environmental preservation and sustainable development.
- (b) Specifically, the action plan proposed to:
- (1) Elaborate the concept of starlight reserve;
  - (2) Identify the different categories of areas, reserves, and properties accordingly to this concept;
  - (3) Establish general technical recommendations for starlight protection related to the safeguarding of natural and cultural properties, light pollution, and intelligent lighting;
  - (4) Integrate these recommendations into the different world heritage programs and initiatives; and
  - (5) Evaluate the possibility of nominating the starlight reserve onto the world heritage list, the biosphere reserve, or both.

A starlight reserve is a site where a commitment to defend the quality of the night sky and access to starlight has been established. Its main function is to preserve the quality of the night sky and its associated cultural, scientific, astronomical, natural, and landscape-related values. A starlight reserve is to have a core or dark zone, which is an unpolluted area where natural night sky light conditions are kept intact. This core zone is to be protected by a buffer or protection zone to avoid the adverse effects of air and light pollution reaching the core zone. Finally, there is to be an external zone where intelligent and responsible lighting criteria are to be enforced, protecting night sky quality from harmful factors such as air pollution.

(c) The requirements for each starlight reserve are to be specific to the characteristics, singularities, and functions of each site and that are targeted to preserve the quality of astronomical observations and wildlife conservation, while maintaining the integrity of nighttime landscapes and cultural heritage scenarios. The declaration of a starlight reserve is to be accompanied by a participative action plan and an ensemble of recommendations aimed at preserving

and recovering night sky quality up to feasible limits and that also preserve related cultural, educational, scientific, and environmental benefits.

(d) The legislature also finds that light pollution has become a world-wide problem and is gradually diminishing the human capacity to observe the stars. The International Commission on Illumination defines light pollution as the sum of all adverse effects of artificial light in as much as they have an impact on the environment, including the direct impact of outdoor lighting and the brightening of the night sky that results from the reflection of radiation, also known as glare or sky glow. Avoidable light pollution refers to light flow emitted at night by artificial light sources that are inappropriate in intensity, direction, or spectral range and that are unnecessary to carry out their intended function or when artificial lighting is used in particular sites, such as observatories, natural areas, or sensitive landscapes. Irresponsible lighting includes over-illumination, which makes an excessive and unnecessary use of artificial light, as well as poorly designed luminaires that cause glare or sky glow. (A luminaire is an apparatus that controls the distribution of light given by a lamp that includes all the components necessary for fixing and protecting the lamp and for connecting it to a power supply, colloquially known as a lighting fitting or fixture.)

The legislature further finds that light pollution causes the greatest amount of harm to the quality of the night sky even though viable solutions are available to reduce light pollution. The purpose of this Act is to reduce the amount of light pollution so that the quality of the night sky is preserved in the State.

## PART II

**SECTION 2. Statewide starlight reserve strategy; advisory working committee; duty.** (a) The department of business, economic development, and tourism shall develop a statewide starlight reserve strategy. The department of business, economic development, and tourism shall be assisted by a temporary advisory committee, to be placed within the department for administrative purposes. The members of the temporary advisory committee shall consist of:

- (1) The director of the department of business, economic development, and tourism or the director's designee;
- (2) The comptroller or the comptroller's designee;
- (3) The director of the institute for astronomy of the University of Hawaii or the director's designee;
- (4) The director of health or the director's designee;
- (5) The director of transportation or the director's designee;
- (6) The chairperson of the board of land and natural resources or the chairperson's designee;
- (7) The offices of the mayors of the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu or the mayors' designees;
- (8) The chairperson of the office of Hawaiian affairs or the chairperson's designee;
- (9) A member of the Hawaiian Astronomical Society, selected by its board of directors; and
- (10) A lighting engineer selected by the director of the department of business, economic development, and tourism.

(b) The director of business, economic development, and tourism shall designate the chairperson of the advisory committee. The advisory committee shall convene its initial meeting no later than July 30, 2009.

(c) It shall be the duty of the department of business, economic development, and tourism, assisted by the advisory committee, to develop a statewide

starlight reserve strategy to preserve the quality of the night sky and its associated cultural, scientific, astronomical, natural, and landscape-related values. The department shall develop necessary proposed legislation to implement the statewide starlight reserve strategy, including a light pollution law to eliminate irresponsible lighting, such as illumination that makes excessive or unnecessary use of artificial light and poorly designed luminaires that cause glare or sky glow.

**SECTION 3. Statewide starlight reserve strategy; principles and functions; components.** (a) The statewide starlight reserve strategy shall be based on the following principles expressing the functions of the starlight reserve concept:

- (1) To value, protect, and promote the tangible and intangible worldwide cultural heritages associated with the night sky;
- (2) To defend the quality of the night sky for astronomical observation, including establishing measures and regulations to prevent its deterioration through light and atmospheric pollution;
- (3) To establish new bases, especially in natural areas, to safeguard the equilibrium of the biosphere and to protect the earth's biological diversity whose nocturnal and diurnal habitats are threatened by light and atmospheric pollution; and
- (4) To preserve and recover the quality of nocturnal starlit landscapes that has traditionally been perceived by people as an integral part of their natural and cultural heritage.

(b) The statewide starlight reserve strategy shall have the following components:

- (1) An intelligent lighting system that includes:
  - (A) Reduction and prevention of light pollution created by:
    - (i) The unnecessary use at night of artificial light sources that are inappropriate in intensity, direction, or spectral range; and
    - (ii) The use of artificial lighting in certain areas such as observatories, natural areas, or sensitive landscapes;
  - (B) Reduction and prevention of glare or sky glow caused by over-illumination and poorly designed luminaires; and
  - (C) Minimizing the use of artificial lighting only for essential purposes and thereby also conserving energy;
- (2) A tourism component that preserves the quality of the night sky through the use of innovative promotional and educational ecotourism products related to astronomical observation, natural nightscapes, and associated native Hawaiian cultural values and heritage;
- (3) An educational component to educate both Hawaii residents and visitors to the State about the importance of preserving the night sky; and
- (4) A statewide monitoring component to measure and monitor the quality of the night sky.

**SECTION 4. Starlight reserve areas; categories.** The statewide starlight reserve strategy shall consider the inclusion of the following categories of starlight reserve areas:

- (1) Starlight heritage site: archaeological and cultural sites or monuments created as an expression of humanity's relationship with the firmament, which reflect the development of astronomy and its manifestation in the arts and traditions, and that may include:
  - (A) Monuments or groups of buildings related to astronomy;

- (B) Relevant sites and manifestations of cultural heritage related to sky observation, including archaeoastronomical sites;
- (C) Areas where expressions of tangible and intangible cultural heritage associated with astronomy and starlight, including music, traditions, legends, folk tales, and folklore, still survive; and
- (D) World heritage properties and biosphere reserves;
- (2) Starlight astronomy site: exceptional observation sites for optical, infrared, and radio astronomy, including potential future sites, and that may include:
  - (A) Relevant astronomical observatories and their environment;
  - (B) Potential areas for advanced astronomical observation, recognized by the International Astronomical Union and the international scientific community; and
  - (C) Exceptional astronomical observation sites whose characteristics render them especially suited for the development of educational and scientific activities or for the promotion and spread of astronomy;
- (3) Starlight natural site: natural areas where the integrity of the natural conditions, including the quality of the natural night sky, is preserved, and that may include:
  - (A) Habitats of particular relevance that host nocturnal wildlife species particularly sensitive to the loss of night sky quality or vulnerable to the effects of light pollution;
  - (B) Terrestrial and marine areas used as corridors and resting sites by migratory wildlife species whose habits and displacement are harmed by glare or loss of natural night light;
  - (C) Protected natural areas with a special relevance for the development of night-time environment research and management and the study of the natural patterns of light and dark;
  - (D) World heritage properties, biosphere reserves, Ramsar Convention wetland sites, and marine or terrestrial protected areas of international importance; and
  - (E) All protected nature areas in general, since all species and ecosystems depend on natural cycles of day and night;
- (4) Starlight landscape: places where aesthetic and cultural manifestations of the night sky can be observed, and that may include:
  - (A) Areas where the starry sky, as well as exceptional manifestations of light-related phenomena, can be observed;
  - (B) Expressions of nature and geological monuments that create night landscapes of acknowledged value;
  - (C) Cultural landscapes or expressions of natural and artificial works of nature and where the astronomical dimension prevails; and
  - (D) Natural heritage properties and biosphere reserves;
- (5) Starlight oasis-human habitat: populated areas free from negative effects that impede star viewing and decrease night sky quality and that may include:
  - (A) Rural areas of outstanding singularity where the starry sky view is part of their recognized identity;

- (B) Small villages that maintain the night sky reasonably free from atmospheric and light pollution; and
- (C) Tourist destinations that consider the night sky an important resource and that offer activities based on or related to astronomy and the enjoyment of the night sky; and
- (6) Mixed starlight site: sites that combine two or more categories under paragraphs (1) through (5).

**SECTION 5. Statewide lighting law; considerations; lighting in zones.**

The department of business, economic development, and tourism, with the assistance of the advisory group, shall develop necessary proposed legislation to implement a statewide intelligent lighting and light pollution law taking into consideration the following:

- (1) Develop rules regulating the requirements of outdoor lighting to guarantee the protection of night sky quality;
- (2) Incorporate measures to conserve energy and promote responsible outdoor night lighting;
- (3) Develop standards for intelligent lighting design in architecture, urban planning, engineering, and infrastructure development;
- (4) Strengthen statewide commitment to preserving the night sky by adopting intelligent lighting in the public sector;
- (5) Promote labeling to recognize intelligent lighting fixtures and products;
- (6) Develop alliances with both public and private entities primarily responsible for outdoor night lighting;
- (7) Develop measures to avoid obtrusive light and improve the quality of life of local populations; and
- (8) Educate local residents about existing solutions, as well as the environmental, personal, and energy-saving benefits that intelligent night-sky lighting entails.

**SECTION 6. Report; advisory committee terminated.** (a) The department of business, economic development, and tourism shall submit a final report to the legislature no later than twenty days prior to the convening of the regular session of 2010. The report shall include findings, recommendations, and necessary proposed legislation to implement this part.

(b) The advisory committee created in this part shall be terminated on June 30, 2011.

**PART III**

**SECTION 7.** This Act shall take effect upon its approval.

(Approved June 29, 2009.)

**ACT 162**

H.B. NO. 200

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

**SECTION 1. SHORT TITLE.** This Act shall be known and may be cited as the General Appropriations Act of 2009.

**SECTION 2. DEFINITIONS.** Unless otherwise clear from the context, as used in this Act:

- (a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.
- (b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, office of Hawaiian affairs, and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act.

Abbreviations where used to denote the expending agency shall mean the following:

AGR	Department of Agriculture
AGS	Department of Accounting and General Services
ATG	Department of the Attorney General
BED	Department of Business, Economic Development and Tourism
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
EDN	Department of Education
GOV	Office of the Governor
HHL	Department of Hawaiian Home Lands
HMS	Department of Human Services
HRD	Department of Human Resources Development
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
CCH	City and County of Honolulu
COH	County of Hawaii
COK	County of Kauai
COM	County of Maui

- (c) "Means of financing" (or "MOF") means the source from which funds are appropriated or authorized to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:
  - A general funds
  - B special funds
  - C general obligation bond fund
  - D general obligation bond fund with debt service cost to be paid from special funds
  - E revenue bond funds
  - J federal aid interstate funds
  - K federal aid primary funds
  - L federal aid secondary funds
  - M federal aid urban funds
  - N other federal funds
  - R private contributions

- S county funds
- T trust funds
- U interdepartmental transfers
- V federal stimulus funds
- W revolving funds
- X other funds

- (d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.
- (e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

## PART II. PROGRAM APPROPRIATIONS

**SECTION 3. APPROPRIATIONS.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2009 and ending June 30, 2011. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

### PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR	FISCAL YEAR
				2009-2010 M O F	2010-2011 M O F
A. ECONOMIC DEVELOPMENT					
1.	BED100 - STRATEGIC MARKETING & SUPPORT			16.00 *	16.00 *
	OPERATING		BED	1,202,655 A	1,202,655 A
			BED	250,000 N	250,000 N
			BED	1,821,915 W	1,821,915 W
2.	BED107 - FOREIGN TRADE ZONE			19.00 *	19.00 *
	OPERATING		BED	2,147,501 B	2,147,501 B
3.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			30.00 *	29.00 *
	OPERATING		BED	1,874,560 A	1,747,617 A
4.	BED113 - TOURISM			6.00 *	6.00 *
	OPERATING		BED	454,599 A	454,599 A
			BED	6.00 *	6.00 *
			BED	138,208,698 B	141,208,698 B
5.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE			9.00 *	9.00 *
	OPERATING		AGR	1,089,967 B	1,089,967 B
			AGR	5,000,000 W	5,000,000 W
6.	AGR122 - PLANT, PEST, AND DISEASE CONTROL			97.00 *	97.00 *
	OPERATING		AGR	5,602,667 A	5,602,667 A



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
				28.00 *	28.00 *
			AGR	6,024,474 B	6,024,474 B
			AGR	818,383 N	818,383 N
			AGR	512,962 T	512,962 T
				9.00 *	9.00 *
			AGR	956,979 U	956,979 U
			AGR	50,360 W	50,360 W
7.	AGR131 - RABIES QUARANTINE				
	OPERATING		AGR	35.30 *	35.30 *
				3,205,563 B	3,205,563 B
8.	AGR132 - ANIMAL DISEASE CONTROL				
	OPERATING		AGR	20.70 *	20.70 *
			AGR	1,295,454 A	1,295,454 A
			AGR	377,937 N	377,937 N
			AGR	473,224 U	473,224 U
9.	LNR172 - FORESTRY RESOURCE MANAGEMENT AND DEVELOPMENT				
	OPERATING		LNR	16.00 *	16.00 *
				614,743 A	614,743 A
				1.50 *	1.50 *
			LNR	3,630,371 B	3,630,371 B
				1.50 *	1.50 *
			LNR	394,365 N	394,365 N
10.	AGR151 - QUALITY AND PRICE ASSURANCE				
	OPERATING		AGR	20.00 *	20.00 *
				1,137,864 A	1,137,864 A
				1.00 *	1.00 *
			AGR	204,885 B	204,885 B
			AGR	77,424 N	77,424 N
			AGR	300,000 T	300,000 T
			AGR	501,638 W	501,638 W
11.	AGR171 - AGRICULTURAL DEVELOPMENT AND MARKETING				
	OPERATING		AGR	17.00 *	17.00 *
			AGR	1,334,865 A	1,334,865 A
			AGR	20,000 B	20,000 B
			AGR	184,500 N	184,500 N
12.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT				
	OPERATING		AGR	1.00 *	1.00 *
				445,055 A	445,055 A
				9.00 *	9.00 *
			AGR	1,011,320 B	1,011,320 B
				13.00 *	13.00 *
			AGR	1,488,383 W	1,488,383 W
	INVESTMENT CAPITAL		AGR	4,875,000 C	7,600,000 C
			AGR	352,000 N	4,597,000 N
			AGR	373,000 R	3,100,000 R
			AGR	2,000 S	2,000 S
13.	AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH				
	OPERATING		AGR	50,601 A	50,601 A
			AGR	3,391,635 W	3,391,635 W
14.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE				
	OPERATING		AGR	29.00 *	28.00 *
	INVESTMENT CAPITAL		AGS	1,790,607 A	1,750,876 A
				500,000 C	C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
15.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT			10.00 *	10.00 *
	OPERATING		LNR	830,538 A	830,538 A
			LNR	320,394 B	320,394 B
			LNR	753,126 N	753,126 N
16.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM			8.00 *	8.00 *
	OPERATING		AGR	487,129 A	487,129 A
			AGR	60,000 B	60,000 B
			AGR	46,134 N	46,134 N
17.	BED120 - STRATEGIC INDUSTRIES			3.00 *	3.00 *
	OPERATING		BED	307,504 A	307,504 A
				5.00 *	5.00 *
			BED	5,571,741 N	5,571,741 N
			BED	29,763,700 V	708,400 V
18.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION			1.50 *	1.50 *
	OPERATING		BED	816,948 A	816,948 A
				1.50 *	1.50 *
			BED	3,827,732 B	3,827,732 B
			BED	3,648,750 N	3,548,750 N
			BED	1,500,000 W	1,500,000 W
19.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION				
	OPERATING		BED	2,609,375 B	2,609,375 B
			BED	4,272,728 W	4,272,728 W
20.	AGS846 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY				
	OPERATING		AGS	6,413,710 B	7,849,460 B
			AGS	9,931,408 N	9,931,408 N
21.	LNR141 - WATER AND LAND DEVELOPMENT			3.00 *	3.00 *
	OPERATING		LNR	289,997 A	289,997 A
				2.00 *	2.00 *
			LNR	412,411 B	412,411 B
			LNR	166,765 W	166,765 W
	INVESTMENT CAPITAL		LNR	2,150,000 C	2,000,000 C
22.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				
	OPERATING		BED	800,000 U	U
				2.00 *	2.00 *
			BED	1,086,818 W	1,086,818 W
	INVESTMENT CAPITAL		BED	4,196,000 C	1,855,000 C
23.	BED151 - ALOHA TOWER DEVELOPMENT CORPORATION				
	OPERATING		BED	1,628,940 B	B
24.	BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION				
	OPERATING		BED	3,000,000 N	3,000,000 N
			BED	51,923,698 T	21,923,698 T
			BED	21,059,965 V	17,772,775 V
				33.00 *	33.00 *
			BED	7,925,844 W	7,927,398 W
	INVESTMENT CAPITAL		BED	46,500,000 C	10,000,000 C

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR	FISCAL YEAR
				2009-2010 F	2010-2011 F
B. EMPLOYMENT					
1.	LBR111 - WORKFORCE DEVELOPMENT PROGRAM				
	OPERATING		LBR	2.30 * 178,555 A	2.30 * 178,555 A
			LBR	6,834,023 B	6,834,023 B
				118.20 *	118.20 *
			LBR	50,307,130 N	50,307,130 N
			LBR	3,659,105 U	3,659,105 U
			LBR	8,247,187 V	V
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL				
	OPERATING		LBR	3.00 * 143,754 A	3.00 * 143,754 A
			LBR	459,236 N	459,236 N
3.	LBR171 - UNEMPLOYMENT INSURANCE PROGRAM				
	OPERATING		LBR	361,026,650 B	361,026,650 B
				207.50 *	207.50 *
			LBR	15,698,851 N	15,698,851 N
			LBR	150,500,000 V	V
4.	LBR903 - OFFICE OF COMMUNITY SERVICES				
	OPERATING		LBR	3.00 * 2,718,925 A	3.00 * 2,718,925 A
				2.00 *	2.00 *
			LBR	5,894,307 N	5,894,307 N
			LBR	1,200,000 U	1,200,000 U
			LBR	9,500,284 V	152,858 V
	INVESTMENT CAPITAL		LBR	5,572,000 C	C
5.	LBR905 - HI CAREER (KOKUA) INFORMATION DELIVERY SYS				
	OPERATING		LBR	353,983 A	353,983 A
			LBR	169,552 N	169,552 N
6.	HMS802 - VOCATIONAL REHABILITATION				
	OPERATING		HMS	27.13 * 3,835,464 A	27.13 * 3,835,464 A
				95.37 *	95.37 *
			HMS	14,267,982 N	14,267,982 N
			HMS	1,455,371 V	V
			HMS	1,330,200 W	1,330,200 W
	INVESTMENT CAPITAL		HMS	550,000 C	C
7.	LBR143 - HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM				
	OPERATING		LBR	30.00 * 1,644,353 A	30.00 * 1,644,353 A
				25.50 *	25.50 *
			LBR	2,337,087 N	2,337,087 N
			LBR	50,000 W	50,000 W
8.	LBR152 - WAGE STANDARD PROGRAM				
	OPERATING		LBR	22.00 * 1,196,823 A	22.00 * 1,196,823 A
9.	LBR153 - HAWAII CIVIL RIGHTS COMMISSION				
	OPERATING		LBR	21.50 * 1,105,521 A	21.50 * 1,105,521 A
				5.50 *	5.50 *
			LBR	619,781 N	619,781 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
10.	LBR183 - DISABILITY COMPENSATION PROGRAM				
	OPERATING		LBR	98.00 * 4,951,529 A 8.00 *	98.00 * 4,951,529 A 8.00 *
			LBR	23,675,713 B	23,675,713 B
11.	LBR316 - OFFICE OF LANGUAGE ACCESS				
	OPERATING		LBR	5.00 * 431,302 A	5.00 * 431,302 A
12.	LBR161 - HAWAII LABOR RELATIONS BOARD				
	OPERATING		LBR	1.00 * 489,731 A	1.00 * 489,731 A
13.	LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD				
	OPERATING		LBR	10.00 * 760,248 A	10.00 * 760,248 A
14.	LBR871 - EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE				
	OPERATING		LBR	10.80 * 954,532 N	10.80 * 954,532 N
15.	LBR901 - DATA GATHERING, RESEARCH, AND ANALYSIS				
	OPERATING		LBR	6.88 * 446,852 A 28.12 *	6.88 * 446,852 A 28.12 *
			LBR	2,553,114 N	2,553,114 N
16.	LBR902 - GENERAL ADMINISTRATION				
	OPERATING		LBR	25.04 * 1,379,475 A 35.48 *	24.58 * 1,311,457 A 34.94 *
			LBR	3,228,809 N	3,201,896 N

C. TRANSPORTATION FACILITIES

1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT				
	OPERATING		TRN	593.50 * 106,908,627 B	593.50 * 107,618,627 B
	INVESTMENT CAPITAL		TRN	484,305,000 E	72,101,000 E
2.	TRN104 - GENERAL AVIATION				
	OPERATING		TRN	30.00 * 5,952,140 B	30.00 * 5,802,140 B
	INVESTMENT CAPITAL		TRN	1,750,000 E	2,550,000 E
			TRN	9,500,000 N	9,500,000 N
3.	TRN111 - HILO INTERNATIONAL AIRPORT				
	OPERATING		TRN	82.00 * 13,745,928 B	82.00 * 14,030,978 B
			TRN	142,500 N	142,500 N
	INVESTMENT CAPITAL		TRN	2,717,000 E	3,316,000 E
			TRN	2,184,000 N	13,032,000 N
4.	TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOE				
	OPERATING		TRN	83.00 * 13,920,234 B	83.00 * 13,920,234 B
			TRN	95,000 N	95,000 N
	INVESTMENT CAPITAL		TRN	500,000 B	B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			TRN	68,503,000 E	41,100,000 E
			TRN	10,329,000 N	N
5.	TRN116 -	WAIMEA-KOHALA AIRPORT			
	OPERATING		TRN	9.00 * 1,095,534 B	9.00 * 1,095,534 B
6.	TRN118 -	UPOLU AIRPORT			
	OPERATING		TRN	384,500 B	384,500 B
7.	TRN131 -	KAHULUI AIRPORT			
	OPERATING		TRN	151.00 * 23,160,268 B	151.00 * 22,610,268 B
			TRN	2,175,000 N	975,000 N
	INVESTMENT CAPITAL		TRN	500,000 B	B
			TRN	3,772,000 E	42,565,000 E
			TRN	800,000 X	49,500,000 X
8.	TRN133 -	HANA AIRPORT			
	OPERATING		TRN	9.00 * 699,912 B	9.00 * 699,912 B
			TRN	220,000 N	N
9.	TRN135 -	KAPALUA AIRPORT			
	OPERATING		TRN	11.00 * 1,851,634 B	11.00 * 1,851,634 B
10.	TRN141 -	MOLOKAI AIRPORT			
	OPERATING		TRN	13.50 * 2,408,565 B	13.50 * 2,196,565 B
			TRN	405,000 N	315,000 N
	INVESTMENT CAPITAL		TRN	314,000 E	E
			TRN	1,191,000 N	N
11.	TRN143 -	KALAUPAPA AIRPORT			
	OPERATING		TRN	9.00 * 717,691 B	9.00 * 667,691 B
			TRN	333,000 N	N
12.	TRN151 -	LANAI AIRPORT			
	OPERATING		TRN	10.00 * 1,749,863 B	10.00 * 1,751,863 B
	INVESTMENT CAPITAL		TRN	1,733,000 E	E
			TRN	7,304,000 N	N
13.	TRN161 -	LIHUE AIRPORT			
	OPERATING		TRN	101.00 * 14,083,765 B	101.00 * 14,253,765 B
	INVESTMENT CAPITAL		TRN	100,000 E	138,000 E
			TRN	N	608,000 N
14.	TRN163 -	PORT ALLEN AIRPORT			
	OPERATING		TRN	26,841 B	1,841 B
			TRN	268,000 N	N
15.	TRN195 -	AIRPORTS ADMINISTRATION			
	OPERATING		TRN	114.00 * 125,849,495 B	114.00 * 137,359,332 B
	INVESTMENT CAPITAL		TRN	10,660,000 B	7,000,000 B
			TRN	1,000,000 E	15,137,000 E
			TRN	4,000,000 N	5,463,000 N

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			TRN	181,700,000 X	100,000 X
16.	TRN301	HONOLULU HARBOR			
		OPERATING	TRN	120.00 *	120.00 *
		INVESTMENT CAPITAL	TRN	24,158,439 B	23,908,381 B
			TRN	30,200,000 B	B
			TRN	24,800,000 E	105,400,000 E
17.	TRN303	KALAELOA BARBERS POINT HARBOR			
		OPERATING	TRN	3.00 *	3.00 *
		INVESTMENT CAPITAL	TRN	1,963,775 B	2,104,533 B
			TRN	500,000 B	1,000,000 B
18.	TRN305	KEWALO BASIN			
		OPERATING	TRN	800,000 B	B
19.	TRN311	HILO HARBOR			
		OPERATING	TRN	14.00 *	14.00 *
		INVESTMENT CAPITAL	TRN	2,478,260 B	2,675,455 B
			TRN	1,700,000 B	10,000,000 B
			TRN	E	48,000,000 E
20.	TRN313	KAWAIHAE HARBOR			
		OPERATING	TRN	2.00 *	2.00 *
		INVESTMENT CAPITAL	TRN	1,870,072 B	1,734,031 B
			TRN	300,000 B	B
			TRN	52,250,000 E	5,000,000 E
21.	TRN331	KAHULUI HARBOR			
		OPERATING	TRN	18.00 *	18.00 *
		INVESTMENT CAPITAL	TRN	3,254,439 B	3,427,628 B
			TRN	E	33,000,000 E
22.	TRN341	KAUNAKAKAI HARBOR			
		OPERATING	TRN	1.00 *	1.00 *
			TRN	634,804 B	606,144 B
23.	TRN361	NAWILIWILI HARBOR			
		OPERATING	TRN	15.00 *	15.00 *
			TRN	2,534,865 B	2,507,154 B
24.	TRN363	PORT ALLEN HARBOR			
		OPERATING	TRN	1.00 *	1.00 *
		INVESTMENT CAPITAL	TRN	346,547 B	393,619 B
			TRN	500,000 B	3,000,000 B
25.	TRN351	KAUMALAPAU HARBOR			
		OPERATING	TRN	354,499 B	259,837 B
26.	TRN395	HARBORS ADMINISTRATION			
		OPERATING	TRN	72.00 *	72.00 *
		INVESTMENT CAPITAL	TRN	48,446,516 B	47,639,595 B
			TRN	7,500,000 B	6,000,000 B
			TRN	3,386,000 E	3,640,000 E
			TRN	4,000,000 N	4,500,000 N
27.	TRN333	HANA HARBOR			
		OPERATING	TRN	42,540 B	42,519 B
28.	TRN501	OAHU HIGHWAYS			
				225.00 *	225.00 *

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		OPERATING	TRN	86,095,054 B	80,549,624 B
			TRN	2,200,000 N	2,200,000 N
		INVESTMENT CAPITAL	TRN	1,080,000 B	2,900,000 B
			TRN	7,500,000 C	C
			TRN	44,611,000 E	13,700,000 E
			TRN	137,201,000 N	22,000,000 N
			TRN	460,000 X	X
29.	TRN511 - HAWAII HIGHWAYS			124.00 *	124.00 *
		OPERATING	TRN	23,068,777 B	22,740,225 B
		INVESTMENT CAPITAL	TRN	31,135,000 E	3,309,000 E
			TRN	32,920,000 N	13,236,000 N
			TRN	2,110,000 X	X
30.	TRN531 - MAUI HIGHWAYS			65.00 *	65.00 *
		OPERATING	TRN	18,931,493 B	18,874,809 B
			TRN	7,000,000 V	V
		INVESTMENT CAPITAL	TRN	6,795,000 E	8,140,000 E
			TRN	18,400,000 N	4,800,000 N
			TRN	715,000 R	R
			TRN	1,430,000 X	X
31.	TRN541 - MOLOKAI HIGHWAYS			12.00 *	12.00 *
		OPERATING	TRN	4,002,919 B	3,891,896 B
			TRN	6,000,000 V	V
		INVESTMENT CAPITAL	TRN	2,150,000 E	2,000,000 E
			TRN	8,000,000 N	3,000,000 N
32.	TRN551 - LANAI HIGHWAYS			4.00 *	4.00 *
		OPERATING	TRN	830,403 B	977,350 B
33.	TRN561 - KAUAI HIGHWAYS			51.00 *	51.00 *
		OPERATING	TRN	13,487,804 B	13,748,051 B
		INVESTMENT CAPITAL	TRN	22,735,000 E	7,700,000 E
			TRN	36,440,000 N	6,000,000 N
			TRN	17,000,000 V	V
			TRN	690,000 X	X
34.	TRN595 - HIGHWAYS ADMINISTRATION			83.00 *	83.00 *
		OPERATING	TRN	68,210,824 B	74,189,882 B
			TRN	4,417,330 N	4,417,330 N
		INVESTMENT CAPITAL	TRN	12,750,000 B	12,500,000 B
			TRN	11,223,000 E	7,148,000 E
			TRN	25,302,000 N	20,202,000 N
35.	TRN597 - HIGHWAY SAFETY			31.00 *	31.00 *
		OPERATING	TRN	5,864,339 B	5,864,339 B
			TRN	9.00 *	9.00 *
			TRN	5,734,572 N	5,734,572 N
36.	TRN995 - GENERAL ADMINISTRATION			104.00 *	103.00 *
		OPERATING	TRN	14,669,319 B	14,398,423 B
			TRN	26,972,992 N	33,257,167 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			TRN	396,437 R	423,067 R
D. ENVIRONMENTAL PROTECTION					
1. HTH840 - ENVIRONMENTAL MANAGEMENT					
	OPERATING		HTH	57.00 * 3,629,536 A	57.00 * 3,629,536 A
			HTH	60.00 * 80,616,371 B	60.00 * 80,616,371 B
			HTH	45.80 * 8,808,860 N	45.80 * 8,808,860 N
			HTH	53,552,300 V	V
				55.20 *	55.20 *
	INVESTMENT CAPITAL		HTH	215,393,145 W	165,104,952 W
			HTH	2,675,000 C	2,675,000 C
			HTH	13,370,000 N	13,370,000 N
2. AGR846 - PESTICIDES					
	OPERATING		AGR	12.00 * 688,595 A	12.00 * 688,595 A
			AGR	2.00 * 465,190 N	2.00 * 465,190 N
			AGR	7.00 * 971,058 W	7.00 * 971,058 W
3. LNR401 - AQUATIC RESOURCES					
	OPERATING		LNR	26.00 * 2,292,091 A	26.00 * 2,292,091 A
			LNR	2.00 * 3,558,919 N	2.00 * 3,558,919 N
	INVESTMENT CAPITAL		LNR	500,000 C	C
4. LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM					
	OPERATING		LNR	52.00 * 3,763,881 A	52.00 * 3,763,881 A
			LNR	3,405,548 B	3,405,548 B
			LNR	6.00 * 5,136,365 N	6.00 * 5,136,365 N
5. LNR404 - WATER RESOURCES					
	OPERATING		LNR	21.00 * 2,396,240 A	21.00 * 2,350,774 A
			LNR	3.00 * 425,515 B	3.00 * 425,515 B
6. LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT					
	OPERATING		LNR	122.25 * 6,540,717 A	122.25 * 6,540,717 A
			LNR	18.00 * 1,581,554 B	18.00 * 1,581,554 B
			LNR	2.75 * 671,592 N	2.75 * 671,592 N
			LNR	1.00 * 89,374 W	1.00 * 89,374 W
7. LNR407 - NATURAL AREA RESERVES AND WATERSHED MANAGEMENT					
	OPERATING		LNR	22.00 * 957,225 A	22.00 * 957,225 A
			LNR	1.00 * 5,969,352 B	1.00 * 5,969,352 B



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			LNR	700,000 N	700,000 N
8.	HTH850	OFFICE OF ENVIRONMENTAL QUALITY CONTROL		5.00 *	5.00 *
	OPERATING		HTH	343,089 A	343,089 A
9.	LNR906	LNR - NATURAL AND PHYSICAL ENVIRONMENT		30.00 *	30.00 *
	OPERATING		LNR	1,769,028 A	1,723,562 A
				8.00 *	8.00 *
	INVESTMENT CAPITAL		LNR	779,699 B	779,699 B
			LNR	3,088,000 C	2,688,000 C
10.	HTH849	ENVIRONMENTAL HEALTH ADMINISTRATION		15.00 *	15.00 *
	OPERATING		HTH	1,147,336 A	1,147,336 A
				.50 *	.50 *
			HTH	49,875 B	49,875 B
				14.50 *	14.50 *
			HTH	3,201,314 N	3,201,314 N
			HTH	305,883 V	V
				14.00 *	14.00 *
			HTH	3,337,998 W	3,337,998 W
<b>E. HEALTH</b>					
1.	HTH100	COMMUNICABLE DISEASE SERVICES		114.00 *	114.00 *
	OPERATING		HTH	14,362,444 A	14,362,444 A
				16.50 *	16.50 *
			HTH	8,323,176 N	8,325,151 N
2.	HTH131	DISEASE OUTBREAK CONTROL		20.60 *	20.60 *
	OPERATING		HTH	1,730,404 A	1,730,404 A
				34.40 *	34.40 *
			HTH	12,819,280 N	12,819,280 N
3.	HTH141	DENTAL DISEASES		25.00 *	25.00 *
	OPERATING		HTH	1,823,996 A	1,823,996 A
4.	HTH730	EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM		16.00 *	16.00 *
	OPERATING		HTH	62,187,129 A	53,187,129 A
			HTH	14,478,880 B	24,578,810 B
				3.00 *	3.00 *
			HTH	1,268,522 N	1,268,522 N
			HTH	10,980,000 V	7,865,000 V
	INVESTMENT CAPITAL		HTH	3,850,000 C	C
5.	HTH501	DEVELOPMENTAL DISABILITIES		230.75 *	230.75 *
	OPERATING		HTH	54,823,952 A	62,549,649 A
				3.00 *	3.00 *
			HTH	1,746,817 B	1,746,817 B
			HTH	80,277,192 U	72,551,495 U

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
6.	HTH560	FAMILY HEALTH			
	OPERATING		HTH	169.75 * 25,394,205 A	169.75 * 25,618,016 A
			HTH	9.50 * 18,509,132 B	9.50 * 18,285,321 B
			HTH	182.50 * 46,018,585 N	182.50 * 46,018,585 N
			HTH	.50 * 3,139,907 U	.50 * 3,139,907 U
			HTH	2,139,843 V	V
7.	HTH580	COMMUNITY HEALTH SERVICES			
	OPERATING		HTH	197.00 * 13,953,376 A	197.00 * 13,953,376 A
			HTH	20.00 * 1,644,436 B	20.00 * 1,644,436 B
			HTH	11.00 * 4,151,936 N	11.00 * 4,151,936 N
			HTH	1,545,037 U	1,545,037 U
8.	HTH590	TOBACCO SETTLEMENT			
	OPERATING		HTH	17.00 * 49,016,207 B	17.00 * 48,854,086 B
			HTH	4,700,000 U	4,700,000 U
9.	HTH595	HEALTH RESOURCES ADMINISTRATION			
	OPERATING		HTH	2.00 * 157,952 A	1.00 * 106,016 A
			HTH	376,953 B	376,953 B
	INVESTMENT CAPITAL		HTH	2,200,000 C	C
10.	HTH210	HAWAII HEALTH SYSTEMS CORPORATION – CORPORATE OFFICE			
	OPERATING		HTH	820,894 A 55.50 *	238,654 A 53.50 *
			HTH	8,751,106 B	13,325,106 B
			HTH	5,000,000 V	50,000,000 V
	INVESTMENT CAPITAL		HTH	47,422,000 C	1,000 C
11.	HTH211	KAHUKU HOSPITAL			
	OPERATING		HTH	1,500,000 A	1,500,000 A
12.	HTH212	HAWAII HEALTH SYSTEMS CORPORATION – REGIONS			
	OPERATING		HTH	95,940,000 A 2,780.75 *	82,140,000 A 2,780.75 *
			HTH	477,060,000 B	493,800,000 B
13.	HTH420	ADULT MENTAL HEALTH - OUTPATIENT			
	OPERATING		HTH	182.50 * 74,505,416 A	182.50 * 77,276,726 A
			HTH	29,026,070 B	26,254,760 B
			HTH	1,632,230 N	1,632,230 N
14.	HTH430	ADULT MENTAL HEALTH - INPATIENT			
	OPERATING		HTH	625.00 * 54,054,420 A	625.00 * 54,054,420 A
	INVESTMENT CAPITAL		AGS	2,071,000 C	C
15.	HTH440	ALCOHOL AND DRUG ABUSE			
	OPERATING		HTH	22.00 * 18,852,758 A	22.00 * 18,852,758 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			HTH	300,000 B	300,000 B
			HTH	6.00 *	6.00 *
			HTH	13,609,867 N	13,609,867 N
16.	HTH460	- CHILD AND ADOLESCENT MENTAL HEALTH		192.50 *	192.50 *
	OPERATING		HTH	40,554,856 A	41,396,833 A
			HTH	17.00 *	17.00 *
			HTH	21,393,039 B	20,551,062 B
			HTH	2,568,019 N	2,568,019 N
			HTH	2,277,206 U	2,277,206 U
17.	HTH495	- BEHAVIORAL HEALTH ADMINISTRATION		64.50 *	64.50 *
	OPERATING		HTH	7,310,093 A	7,310,093 A
			HTH	3,557,363 N	3,557,363 N
18.	HTH610	- ENVIRONMENTAL HEALTH SERVICES		136.00 *	136.00 *
	OPERATING		HTH	7,081,296 A	7,081,296 A
			HTH	8.00 *	8.00 *
			HTH	1,026,909 B	1,026,909 B
			HTH	6.00 *	6.00 *
			HTH	594,682 N	594,682 N
			HTH	2.00 *	2.00 *
			HTH	107,076 U	107,076 U
19.	HTH710	- STATE LABORATORY SERVICES		82.00 *	82.00 *
	OPERATING		HTH	6,666,528 A	6,666,528 A
			HTH	483,333 N	483,333 N
			HTH	577,728 V	V
20.	HTH720	- HEALTH CARE ASSURANCE		21.70 *	21.70 *
	OPERATING		HTH	1,677,680 A	1,677,680 A
			HTH	406,000 B	406,000 B
			HTH	18.10 *	18.10 *
			HTH	1,662,415 N	1,659,515 N
			HTH	897,904 U	897,904 U
21.	HTH906	- STATE HEALTH PLANNING AND DEVELOPMENT AGENCY		8.00 *	8.00 *
	OPERATING		HTH	556,641 A	556,641 A
			HTH	114,000 B	114,000 B
22.	HTH760	- HEALTH STATUS MONITORING		33.00 *	33.00 *
	OPERATING		HTH	1,184,254 A	1,423,853 A
			HTH	830,670 B	591,071 B
			HTH	6.00 *	6.00 *
			HTH	397,214 N	397,214 N
23.	HTH905	- DEVELOPMENTAL DISABILITIES COUNCIL		1.50 *	1.50 *
	OPERATING		HTH	226,744 A	226,744 A
			HTH	6.50 *	6.50 *
			HTH	462,315 N	462,315 N
24.	HTH907	- GENERAL ADMINISTRATION		122.50 *	122.50 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		OPERATING	HTH	8,609,591 A	8,609,591 A
		INVESTMENT CAPITAL	HTH	1,304,909 N	1,304,909 N
			AGS	6,359,000 C	C

F. SOCIAL SERVICES

1. HMS301 - CHILD PROTECTIVE SERVICES

				289.51 *	289.51 *
		OPERATING	HMS	25,698,652 A	25,698,652 A
			HMS	617,587 B	617,587 B
				247.99 *	247.99 *
			HMS	39,456,846 N	39,456,846 N

2. HMS302 - GENERAL SUPPORT FOR CHILD CARE

				24.57 *	24.57 *
		OPERATING	HMS	1,307,377 A	1,307,377 A
				17.43 *	17.43 *
			HMS	6,790,950 N	6,790,950 N
			HMS	1,550,000 V	1,550,000 V

3. HMS303 - CHILD PROTECTIVE SERVICES PAYMENTS

		OPERATING	HMS	41,816,013 A	41,816,013 A
			HMS	20,095,666 N	20,095,666 N
			HMS	2,300,000 V	1,300,000 V

4. HMS305 - CASH SUPPORT FOR CHILD CARE

		OPERATING	HMS	19,211,811 A	19,211,811 A
			HMS	40,150,754 N	40,150,754 N
			HMS	2,600,000 V	2,600,000 V

5. HMS501 - IN-COMMUNITY YOUTH PROGRAMS

				24.00 *	24.00 *
		OPERATING	HMS	8,062,149 A	8,062,149 A
			HMS	5,183,697 N	5,183,697 N
		INVESTMENT CAPITAL	HMS	80,000 C	C

6. HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)

				124.00 *	124.00 *
		OPERATING	HMS	10,404,536 A	10,404,536 A
			HMS	232 U	232 U
		INVESTMENT CAPITAL	HMS	2,087,000 C	C

7. DEF112 - SERVICES TO VETERANS

				19.00 *	19.00 *
		OPERATING	DEF	1,524,292 A	1,524,292 A
		INVESTMENT CAPITAL	AGS	459,000 C	2,874,000 C

8. HMS601 - ADULT AND COMMUNITY CARE SERVICES

				70.08 *	70.08 *
		OPERATING	HMS	6,570,519 A	6,420,519 A
				2.42 *	2.42 *
			HMS	4,884,442 N	4,884,442 N
			HMS	10,000 R	10,000 R
			HMS	487,938 U	280,106 U
		INVESTMENT CAPITAL	HMS	400,000 C	C

9. HMS206 - FEDERAL ASSISTANCE PAYMENTS

		OPERATING	HMS	5,000,000 N	5,000,000 N
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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
10.	HMS211 - CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY	OPERATING	HMS	25,528,485 A	25,528,485 A
			HMS	44,000,000 N	44,000,000 N
11.	HMS212 - CASH SUPPORT FOR AGED, BLIND, DISABLED INDIV	OPERATING	HMS	25,318,536 A	25,318,536 A
12.	HMS220 - RENTAL HOUSING SERVICES	OPERATING	HMS	4,414,556 A	4,414,556 A
				171.00 *	171.00 *
			HMS	33,718,184 N	33,718,184 N
				13.00 *	13.00 *
		INVESTMENT CAPITAL	HMS	3,914,984 W	3,914,984 W
			HMS	7,913,000 C	4,500,000 C
13.	HMS229 - HPHA ADMINISTRATION	OPERATING	HMS	71.00 *	71.00 *
			HMS	34,826,095 N	34,826,095 N
			HMS	17.00 *	17.00 *
				2,581,795 W	2,581,795 W
14.	HMS222 - RENTAL ASSISTANCE SERVICES	OPERATING	HMS	1.25 *	1.25 *
			HMS	1,098,716 A	1,098,716 A
			HMS	16.75 *	16.75 *
				25,819,941 N	25,819,941 N
15.	HMS224 - HOMELESS SERVICES	OPERATING	HMS	4.00 *	4.00 *
			HMS	14,107,491 A	14,107,491 A
			HMS	1,369,108 N	1,369,108 N
			HMS	4,415,475 V	81,699 V
16.	HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT	OPERATING	HMS	17,125,395 A	17,125,395 A
17.	HMS401 - HEALTH CARE PAYMENTS	OPERATING	HMS	459,037,132 A	525,219,050 A
			HMS	701,911,653 N	700,824,253 N
			HMS	44,409,563 U	44,409,563 U
			HMS	175,189,095 V	93,162,323 V
18.	HMS236 - CASE MANAGEMENT FOR SELF-SUFFICIENCY	OPERATING	HMS	348.23 *	348.23 *
			HMS	15,591,290 A	15,591,290 A
				281.77 *	281.77 *
			HMS	19,844,009 N	19,844,009 N
19.	HMS238 - DISABILITY DETERMINATION	OPERATING	HMS	45.00 *	45.00 *
				6,041,667 N	6,041,667 N
20.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES	OPERATING	ATG	85.00 *	85.00 *
			ATG	4,106,961 A	4,106,961 A
				165.00 *	165.00 *
			ATG	15,554,688 N	15,554,688 N
			ATG	4,322,607 T	2,461,570 T
			ATG	4,113,713 V	501,112 V

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
21.	HMS237 - EMPLOYMENT AND TRAINING OPERATING		HMS HMS	491,214 A 1,197,541 N	491,214 A 1,197,541 N
22.	HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS			76.00 *	76.00 *
	OPERATING		HHL HHL	6,194,749 B 9,601,391 N	6,194,749 B 9,601,391 N
				50.00 *	50.00 *
	INVESTMENT CAPITAL		HHL HHL HHL	3,784,089 T 10,000,000 C 15,000,000 N	3,784,089 T C 15,000,000 N
23.	HHL625 - MANAGEMENT & GENERAL SUPPORT FOR HAWAIIAN HOME-STEADS			33.00 *	33.00 *
	OPERATING		HHL	6,534,432 B	6,534,432 B
				26.00 *	26.00 *
			HHL	2,639,655 T	2,639,655 T
24.	HTH904 - EXECUTIVE OFFICE ON AGING			3.74 *	3.74 *
	OPERATING		HTH	6,062,748 A	6,062,748 A
				8.01 *	8.01 *
	INVESTMENT CAPITAL		HTH HTH	7,443,720 N 1,500,000 C	7,443,720 N C
25.	HTH520 - DISABILITY AND COMMUNICATIONS ACCESS BOARD			5.00 *	5.00 *
	OPERATING		HTH HTH	1,320,624 A 10,000 B	946,804 A 494,271 B
				2.00 *	2.00 *
			HTH	204,812 U	204,812 U
26.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			152.74 *	152.74 *
	OPERATING		HMS	9,323,508 A	9,323,508 A
				146.26 *	146.26 *
			HMS	19,497,027 N	19,497,027 N
27.	HMS903 - GENERAL SUPPORT FOR SELF SUFFICIENCY SERVICES			58.22 *	58.22 *
	OPERATING		HMS	14,342,042 A	14,342,042 A
				57.78 *	57.78 *
			HMS HMS	77,990,706 N 25,550,000 V	62,990,706 N 6,387,500 V
28.	HMS904 - GENERAL ADMINISTRATION (DHS)			161.34 *	161.34 *
	OPERATING		HMS	8,096,944 A	8,051,478 A
				15.66 *	15.66 *
			HMS	1,489,518 N	1,489,518 N
29.	HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES			17.56 *	17.56 *
	OPERATING		HMS	2,236,377 A	2,236,377 A
				10.44 *	10.44 *
			HMS	1,871,539 N	1,871,539 N

## PROGRAM APPROPRIATIONS

				APPROPRIATIONS	
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
G. FORMAL EDUCATION					
1.	EDN100 - SCHOOL-BASED BUDGETING				
	OPERATING		EDN	12,375.60 * 753,950,947 A	12,375.60 * 753,950,947 A
			EDN	6,780,000 B	6,780,000 B
			EDN	171,325,264 N	171,425,264 N
			EDN	13,750,000 T	13,750,000 T
			EDN	4,500,000 U	4,500,000 U
			EDN	97,308,342 V	53,764,299 V
			EDN	3,398,000 W	3,398,000 W
	INVESTMENT CAPITAL		EDN	235,051,000 B	45,786,000 B
2.	EDN150 - COMPREHENSIVE STUDENT SUPPORT SERVICES				
	OPERATING		EDN	5,639.00 * 368,188,673 A	5,639.00 * 368,291,497 A
			EDN	100,000 B	100,000 B
				2.00 *	2.00 *
			EDN	46,246,766 N	46,246,766 N
			EDN	20,493,170 V	1 V
				4.00 *	4.00 *
			EDN	2,209,121 W	2,106,297 W
3.	EDN200 - INSTRUCTIONAL SUPPORT				
	OPERATING		EDN	197.50 * 29,037,169 A	197.50 * 29,037,169 A
				6.00 *	6.00 *
			EDN	1,900,000 B	1,900,000 B
			EDN	926,461 N	661,000 N
			EDN	800,000 U	800,000 U
			EDN	1 V	1 V
4.	EDN300 - STATE AND COMPLEX AREA ADMINISTRATION				
	OPERATING		EDN	509.00 * 51,432,190 A	509.00 * 51,432,190 A
			EDN	35,000 N	35,000 N
			EDN	1 V	1 V
5.	EDN400 - SCHOOL SUPPORT				
	OPERATING		EDN	641.00 * 184,814,106 A	641.00 * 184,714,106 A
				726.50 *	726.50 *
			EDN	25,601,798 B	29,510,340 B
				3.00 *	3.00 *
			EDN	35,396,556 N	35,511,521 N
			EDN	1 V	1 V
				4.00 *	4.00 *
			EDN	9,022,625 W	9,022,625 W
	INVESTMENT CAPITAL		EDN	4,800,000 B	4,800,000 B
6.	EDN500 - SCHOOL COMMUNITY SERVICES				
	OPERATING		EDN	35.50 * 8,674,528 A	35.50 * 8,674,528 A
			EDN	3,800,000 B	3,800,000 B
			EDN	3,260,007 N	3,260,007 N
			EDN	9,000,000 U	9,000,000 U
			EDN	1 V	1 V
			EDN	8,295,000 W	8,295,000 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
7.	EDN600 - CHARTER SCHOOLS				
	OPERATING		EDN	52,732,012 A	52,746,554 A
			EDN	4,088,212 V	2,835,696 V
8.	BUF745 - RETIREMENT BENEFITS PAYMENTS - DOE				
	OPERATING		BUF	267,058,948 A	270,397,184 A
9.	BUF765 - HEALTH PREMIUM PAYMENTS - DOE				
	OPERATING		BUF	182,617,125 A	197,937,761 A
10.	BUF725 - DEBT SERVICE PAYMENTS - DOE				
	OPERATING		BUF	194,793,118 A	204,995,708 A
11.	AGS807 - SCHOOL R&M, NEIGHBOR ISLAND DISTRICTS				
	OPERATING			80.00 *	80.00 *
			AGS	4,251,325 A	4,251,325 A
			AGS	1,500,000 U	1,500,000 U
12.	EDN407 - PUBLIC LIBRARIES				
	OPERATING			555.55 *	555.55 *
			EDN	28,847,163 A	28,847,163 A
			EDN	3,125,000 B	3,125,000 B
			EDN	1,365,244 N	1,365,244 N
			EDN	1 V	1 V
	INVESTMENT CAPITAL		AGS	4,360,000 C	10,000,000 C
13.	DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY				
	OPERATING		DEF	1,373,245 A	1,373,245 A
			DEF	2,098,686 N	2,098,686 N
14.	UOH100 - UNIVERSITY OF HAWAII, MANOA				
	OPERATING			3,619.34 *	3,619.34 *
			UOH	225,795,228 A	225,795,228 A
				291.25 *	291.25 *
			UOH	232,524,688 B	233,262,488 B
				78.06 *	78.06 *
			UOH	5,485,593 N	5,485,593 N
			UOH	14,740,000 V	14,740,000 V
				134.25 *	134.25 *
	INVESTMENT CAPITAL		UOH	76,555,831 W	76,555,831 W
			UOH	45,005,000 B	B
			UOH	23,250,000 C	C
			UOH	187,097,000 E	85,800,000 E
			UOH	10,900,000 N	N
			UOH	5,250,000 R	R
15.	UOH210 - UNIVERSITY OF HAWAII, HILO				
	OPERATING			514.75 *	514.75 *
			UOH	33,444,636 A	33,544,636 A
				79.00 *	95.00 *
			UOH	29,507,483 B	33,895,092 B
			UOH	394,543 N	394,543 N
			UOH	300,000 V	300,000 V
				7.50 *	8.50 *
	INVESTMENT CAPITAL		UOH	6,299,192 W	6,281,192 W
			UOH	6,500,000 C	C
16.	UOH220 - SMALL BUSINESS DEVELOPMENT				
	OPERATING		UOH	993,167 A	993,167 A



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
17.	UOH700	UNIVERSITY OF HAWAII, WEST OAHU			
	OPERATING	UOH	93.00 * 6,100,808 A 5,097,729 B 7,000 N 328,960 W	93.00 * 6,100,808 A 6,924,533 B 7,000 N 328,960 W	
18.	UOH800	UNIVERSITY OF HAWAII, COMMUNITY COLLEGES			
	OPERATING	UOH	1,831.00 * 119,075,434 A 82.00 * 60,787,688 B 15.60 * 4,444,818 N 6,960,000 V 5,064,891 W 13,657,000 C	1,831.00 * 119,075,434 A 82.00 * 65,572,392 B 15.60 * 4,444,818 N 6,960,000 V 5,064,891 W 4,578,000 C	
19.	UOH900	UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT			
	OPERATING	UOH	403.00 * 36,520,580 A 8.00 * 21,371,128 B 4.00 * 932,807 N 10,000,000 V 15.00 * 15,659,674 W 128,501,000 C 25,319,000 E	403.00 * 36,520,580 A 8.00 * 21,371,128 B 4.00 * 932,807 N V 15.00 * 15,659,674 W 27,286,000 C 2,813,000 E	
20.	BUF748	RETIREMENT BENEFITS PAYMENTS - UH			
	OPERATING	BUF	118,195,306 A	119,672,747 A	
21.	BUF768	HEALTH PREMIUM PAYMENTS - UH			
	OPERATING	BUF	63,937,201 A	69,839,777 A	
22.	BUF728	DEBT SERVICE PAYMENTS - UH			
	OPERATING	BUF	72,092,672 A	75,868,637 A	

## H. CULTURE AND RECREATION

1.	UOH881	UNIVERSITY OF HAWAII, AQUARIA			
	OPERATING		UOH	13.00 *	13.00 *
			UOH	661,352 A	661,352 A
			UOH	7.00 *	7.00 *
			UOH	3,131,189 B	3,131,189 B
			UOH	1,000,000 W	1,000,000 W
2.	AGS881	STATE FOUNDATION ON CULTURE AND THE ARTS			
	OPERATING		AGS	13.50 *	13.50 *
			AGS	1,847,961 A	1,847,961 A
			AGS	16.50 *	16.50 *
			AGS	4,312,061 B	4,312,061 B
			AGS	3.00 *	3.00 *
			AGS	787,743 N	787,743 N
			AGS	625,000 U	625,000 U
			AGS	292,900 V	V
	INVESTMENT CAPITAL		AGS	250,000 C	C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
3.	AGS818 - KING KAMEHAMEHA CELEBRATION COMMISSION				
	OPERATING		AGS	41,532 A	A
			AGS	T	58,975 T
4.	LNR802 - HISTORIC PRESERVATION				
	OPERATING		LNR	12.00 * 1,025,143 A	12.00 * 1,063,787 A
			LNR	150,661 B	150,661 B
			LNR	506,876 N	506,876 N
5.	LNR804 - FOREST AND OUTDOOR RECREATION				
	OPERATING		LNR	34.50 * 1,392,045 A	34.50 * 1,392,045 A
			LNR	6.50 * 603,497 B	6.50 * 603,497 B
			LNR	5.00 * 1,922,441 N	5.00 * 1,922,441 N
			LNR	686,726 W	686,726 W
6.	LNR805 - RECREATIONAL FISHERIES				
	OPERATING		LNR	7.00 * 197,527 A	7.00 * 257,551 A
			LNR	76,093 B	76,093 B
			LNR	1,024,314 N	1,024,314 N
7.	LNR806 - PARKS ADMINISTRATION AND OPERATION				
	OPERATING		LNR	90.00 * 4,646,776 A	90.00 * 4,586,776 A
			LNR	38.00 * 6,874,349 B	38.00 * 6,874,349 B
	INVESTMENT CAPITAL		LNR	1,218,456 N	1,218,456 N
			LNR	2,453,000 C	C
8.	LNR801 - OCEAN-BASED RECREATION				
	OPERATING		LNR	105.00 * 16,579,175 B	105.00 * 16,579,175 B
			LNR	1,001,813 N	1,001,813 N
	INVESTMENT CAPITAL		LNR	3,630,000 C	C
9.	AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM				
	OPERATING		AGS	38.50 * 8,951,552 B	38.50 * 8,876,552 B
	INVESTMENT CAPITAL		AGS	15,000,000 C	12,100,000 C

I. PUBLIC SAFETY

1.	PSD402 - HALAWA CORRECTIONAL FACILITY				
	OPERATING		PSD	398.00 * 23,560,612 A	398.00 * 23,560,612 A
			PSD	28,719 W	28,719 W
2.	PSD403 - KULANI CORRECTIONAL FACILITY				
	OPERATING		PSD	76.00 * 5,181,327 A	76.00 * 5,181,327 A
3.	PSD404 - WAIAWA CORRECTIONAL FACILITY				
	OPERATING		PSD	112.00 * 6,017,583 A	112.00 * 6,017,583 A
			PSD	15,000 W	15,000 W

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		INVESTMENT CAPITAL	PSD	185,000 C	C
4.	PSD405	HAWAII COMMUNITY CORRECTIONAL CENTER		171.00 *	171.00 *
		OPERATING	PSD	8,803,502 A	8,803,502 A
5.	PSD406	MAUI COMMUNITY CORRECTIONAL CENTER		187.00 *	187.00 *
		OPERATING	PSD	9,783,520 A	9,783,520 A
			PSD	209,721 S	209,721 S
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER		499.00 *	499.00 *
		OPERATING	PSD	28,421,191 A	28,652,408 A
			PSD	30,000 W	30,000 W
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER		68.00 *	68.00 *
		OPERATING	PSD	3,707,288 A	3,707,288 A
8.	PSD409	WOMEN'S COMMUNITY CORRECTIONAL CENTER		132.00 *	132.00 *
		OPERATING	PSD	6,929,716 A	6,929,716 A
9.	PSD410	INTAKE SERVICE CENTERS		61.00 *	61.00 *
		OPERATING	PSD	3,300,075 A	3,300,075 A
10.	PSD420	CORRECTIONS PROGRAM SERVICES		183.00 *	183.00 *
		OPERATING	PSD	19,377,311 A	19,377,311 A
11.	PSD421	HEALTH CARE		200.10 *	200.10 *
		OPERATING	PSD	20,582,516 A	20,582,516 A
12.	PSD422	HAWAII CORRECTIONAL INDUSTRIES		2.00 *	2.00 *
		OPERATING	PSD	7,486,089 W	7,486,089 W
13.	PSD808	NON-STATE FACILITIES		9.00 *	9.00 *
		OPERATING	PSD	58,604,387 A	66,259,911 A
14.	PSD502	NARCOTICS ENFORCEMENT		13.00 *	13.00 *
		OPERATING	PSD	973,478 A	973,478 A
			PSD	206,161 N	206,161 N
				6.00 *	6.00 *
			PSD	634,455 W	634,455 W
15.	PSD503	SHERIFF		291.00 *	291.00 *
		OPERATING	PSD	13,854,316 A	13,701,316 A
				7.00 *	7.00 *
			PSD	577,448 N	577,448 N
				59.00 *	59.00 *
			PSD	5,246,216 U	5,246,216 U
16.	PSD611	ADULT PAROLE DETERMINATIONS		3.00 *	3.00 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		OPERATING	PSD	238,109 A	238,109 A
17.		PSD612 - ADULT PAROLE SUPERVISION AND COUNSELING		55.00 *	55.00 *
		OPERATING	PSD	3,553,934 A	3,553,934 A
18.		PSD613 - CRIME VICTIM COMPENSATION COMMISSION		8.00 *	8.00 *
		OPERATING	PSD	1,892,174 B	1,892,174 B
			PSD	859,315 N	859,315 N
			PSD	115,642 V	V
19.		PSD900 - GENERAL ADMINISTRATION		149.10 *	148.10 *
		OPERATING	PSD	9,299,063 A	9,008,879 A
			PSD	693,832 B	693,832 B
			PSD	75,065 T	75,065 T
			PSD	742,980 X	742,980 X
		INVESTMENT CAPITAL	PSD	250,000 C	C
20.		ATG231 - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION		28.50 *	28.50 *
		OPERATING	ATG	1,521,154 A	1,521,154 A
			ATG	1,757,594 N	1,757,594 N
				32.50 *	32.50 *
			ATG	2,886,525 W	2,886,525 W
21.		LNR810 - PREVENTION OF NATURAL DISASTERS		8.50 *	8.50 *
		OPERATING	LNR	1,817,009 B	2,117,009 B
				.50 *	.50 *
			LNR	271,070 N	271,070 N
22.		DEF110 - AMELIORATION OF PHYSICAL DISASTERS		125.80 *	125.80 *
		OPERATING	DEF	11,200,254 A	11,200,254 A
				81.70 *	81.70 *
			DEF	74,207,982 N	74,207,982 N
			DEF	464,458 S	464,458 S
			DEF	12,019,595 U	12,019,595 U
		INVESTMENT CAPITAL	AGS	7,206,000 C	3,861,000 C
			DEF	2,335,000 C	840,000 C
			AGS	1,000,000 N	925,000 N
			DEF	7,225,000 N	2,015,000 N

J. INDIVIDUAL RIGHTS

- CCA102 - CABLE TELEVISION
 

OPERATING	CCA	4.00 *	4.00 *
		1,286,537 B	1,286,537 B
- CCA103 - CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES
 

OPERATING	CCA	15.00 *	15.00 *
		2,169,331 B	2,169,331 B
- CCA104 - FINANCIAL INSTITUTION SERVICES
 

OPERATING	CCA	30.00 *	30.00 *
		2,964,039 B	2,964,039 B

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
4.	CCA105	- PROFESSIONAL AND VOCATIONAL LICENSING			
	OPERATING		CCA	53.00 * 5,495,195 B	53.00 * 5,495,195 B
			CCA	5.00 * 2,081,311 T	5.00 * 2,061,311 T
5.	BUF901	- PUBLIC UTILITIES COMMISSION			
	OPERATING		BUF	51.00 * 9,963,842 B	51.00 * 9,598,721 B
6.	CCA106	- INSURANCE REGULATORY SERVICES			
	OPERATING		CCA	81.00 * 13,877,058 B	81.00 * 13,877,058 B
			CCA	200,000 T	200,000 T
7.	CCA110	- OFFICE OF CONSUMER PROTECTION			
	OPERATING		CCA	14.00 * 1,573,840 B	14.00 * 1,573,840 B
			CCA	50,681 T	50,681 T
8.	AGR812	- MEASUREMENT STANDARDS			
	OPERATING		AGR	11.00 * 558,911 A	11.00 * 558,911 A
9.	CCA111	- BUSINESS REGISTRATION AND SECURITIES REGULATION			
	OPERATING		CCA	71.00 * 6,709,851 B	71.00 * 6,709,851 B
10.	CCA112	- REGULATED INDUSTRIES COMPLAINTS OFFICE			
	OPERATING		CCA	65.00 * 5,579,836 B	65.00 * 5,579,836 B
11.	CCA191	- GENERAL SUPPORT			
	OPERATING		CCA	46.00 * 5,953,460 B	45.00 * 5,910,100 B
12.	LTG105	- ENFORCEMENT OF INFORMATION PRACTICES			
	OPERATING		LTG	5.00 * 426,977 A	5.00 * 426,977 A
13.	BUF151	- OFFICE OF THE PUBLIC DEFENDER			
	OPERATING		BUF	82.00 * 9,915,967 A	82.00 * 9,915,967 A
14.	LNR111	- CONVEYANCES AND RECORDINGS			
	OPERATING		LNR	60.00 * 4,317,693 B	60.00 * 4,267,693 B
15.	HMS888	- COMMISSION ON THE STATUS OF WOMEN			
	OPERATING		HMS	1.00 * 166,713 A	1.00 * 166,713 A

## K. GOVERNMENT-WIDE SUPPORT

## 1. GOV100 - OFFICE OF THE GOVERNOR

OPERATING	GOV	31.00 * 3,176,357 A	31.00 * 2,368,352 A
INVESTMENT CAPITAL	GOV	1,000 C	1,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
2.	LTG100 -	OFFICE OF THE LIEUTENANT GOVERNOR			
	OPERATING		LTG	3.00 * 645,918 A	3.00 * 541,647 A
3.	BED144 -	STATEWIDE PLANNING AND COORDINATION			
	OPERATING		BED	16.00 * 1,557,671 A	16.00 * 1,557,671 A
			BED	4.00 * 2,546,810 N	4.00 * 2,546,810 N
			BED	1,000,000 W	1,000,000 W
4.	BED103 -	STATEWIDE LAND USE MANAGEMENT			
	OPERATING		BED	6.00 * 506,202 A	6.00 * 506,202 A
5.	BED130 -	ECONOMIC PLANNING AND RESEARCH			
	OPERATING		BED	17.00 * 1,125,445 A	17.00 * 1,125,445 A
6.	BUF101 -	DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION			
	OPERATING		BUF	46.00 * 11,742,159 A	46.00 * 11,689,395 A
	INVESTMENT CAPITAL		AGS	1,000,000 C	C
			BUF	269,851,000 C	80,586,000 C
7.	AGS871 -	CAMPAIGN SPENDING COMMISSION			
	OPERATING		AGS	5.00 * 665,331 T	5.00 * 4,694,019 T
8.	AGS879 -	OFFICE OF ELECTIONS			
	OPERATING		AGS	17.50 * 3,894,805 A	17.50 * 2,733,381 A
			AGS	.50 * 7,473,714 N	.50 * 7,473,714 N
9.	TAX100 -	TAXATION			
	OPERATING		TAX	187.50 * 8,870,813 A	187.50 * 8,870,813 A
10.	TAX105 -	TAX SERVICES AND PROCESSING			
	OPERATING		TAX	138.00 * 6,428,501 A	138.00 * 6,428,501 A
11.	TAX107 -	SUPPORTING SERVICES - REVENUE COLLECTION			
	OPERATING		TAX	66.00 * 6,876,905 A	66.00 * 6,819,563 A
			TAX	452,000 B	452,000 B
12.	AGS101 -	STATEWIDE ACCOUNTING SERVICES			
	OPERATING		AGS	8.00 * 638,133 A	8.00 * 638,133 A
13.	AGS102 -	EXPENDITURE EXAMINATION			
	OPERATING		AGS	16.00 * 1,094,622 A	16.00 * 1,094,622 A
14.	AGS103 -	RECORDING AND REPORTING			
	OPERATING		AGS	11.00 * 726,933 A	11.00 * 726,933 A

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
15.	AGS104 - INTERNAL POST AUDIT				
	OPERATING		AGS	11.00 * 672,696 A	11.00 * 672,696 A
16.	BUF115 - FINANCIAL ADMINISTRATION				
	OPERATING		BUF	14.00 * 1,845,203 A	14.00 * 1,845,203 A
			BUF	4.00 * 7,043,023 T	4.00 * 6,822,048 T
			BUF	5,525 U	5,525 U
17.	BUF721 - DEBT SERVICE PAYMENTS				
	OPERATING		BUF	223,937,085 A	229,918,270 A
18.	ATG100 - LEGAL SERVICES				
	OPERATING		ATG	234.93 * 19,241,832 A	234.93 * 19,186,428 A
			ATG	22.00 * 2,346,782 B	22.00 * 2,346,782 B
			ATG	13.00 * 8,616,059 N	13.00 * 8,616,059 N
			ATG	3,918,000 T	3,918,000 T
			ATG	55.35 * 8,675,374 U	55.35 * 8,675,374 U
			ATG	2,996,629 V	2,980,318 V
			ATG	4.00 * 3,070,435 W	4.00 * 3,070,435 W
19.	AGS131 - INFORMATION PROCESSING SERVICES				
	OPERATING		AGS	157.00 * 14,612,054 A	157.00 * 14,612,054 A
			AGS	33.00 * 2,812,584 U	33.00 * 2,812,584 U
	INVESTMENT CAPITAL		AGS	8,925,000 C	C
20.	AGS111 - ARCHIVES - RECORDS MANAGEMENT				
	OPERATING		AGS	20.00 * 905,438 A	20.00 * 905,438 A
21.	AGS891 - WIRELESS ENHANCED 911 BOARD				
	OPERATING		AGS	9,000,000 B	9,000,000 B
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY				
	OPERATING		HRD	99.00 * 13,999,823 A	99.00 * 13,892,511 A
			HRD	700,000 B	700,000 B
			HRD	4,886,281 U	4,886,281 U
23.	HRD191 - SUPPORTING SERVICES - HUMAN RESOURCES DEV				
	OPERATING		HRD	13.00 * 1,551,477 A	13.00 * 1,433,673 A
24.	BUF141 - EMPLOYEES' RETIREMENT SYSTEM				
	OPERATING		BUF	99.00 * 11,317,896 X	99.00 * 11,317,896 X
25.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND				
	OPERATING		BUF	27.00 * 5,388,703 T	27.00 * 4,396,603 T

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M	FISCAL M
				YEAR O 2009-2010 F	YEAR O 2010-2011 F
26.	BUF741 - RETIREMENT BENEFITS PAYMENTS				
	OPERATING		BUF	263,986,686 A	267,286,521 A
27.	BUF761 - HEALTH PREMIUM PAYMENTS				
	OPERATING		BUF	174,721,854 A	190,204,383 A
28.	LNR101 - PUBLIC LANDS MANAGEMENT				
	OPERATING		LNR	51.00 * 12,864,211 B	51.00 * 12,364,211 B
			LNR	75,978 N	75,978 N
	INVESTMENT CAPITAL		LNR	1,500,000 B	B
			LNR	234,000 C	C
			LNR	4,000,000 R	R
			LNR	2,000,000 U	U
29.	AGS203 - STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION				
	OPERATING		AGS	7,037,995 A	7,037,995 A
			AGS	4.00 * 25,285,247 W	4.00 * 25,285,247 W
30.	AGS211 - LAND SURVEY				
	OPERATING		AGS	14.00 * 823,686 A	14.00 * 823,686 A
			AGS	285,000 U	285,000 U
31.	AGS223 - OFFICE LEASING				
	OPERATING		AGS	5.00 * 10,655,541 A	5.00 * 10,655,541 A
			AGS	5,500,000 U	5,500,000 U
32.	AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION				
	OPERATING		AGS	16.00 * 1,188,989 A	16.00 * 1,188,989 A
			AGS	4,000,000 W	4,000,000 W
	INVESTMENT CAPITAL		AGS	21,464,000 C	12,365,000 C
33.	AGS231 - CENTRAL SERVICES - CUSTODIAL SERVICES				
	OPERATING		AGS	148.50 * 14,675,071 A	148.50 * 14,675,071 A
			AGS	58,744 B	58,744 B
			AGS	894,001 U	894,001 U
34.	AGS232 - CENTRAL SERVICES - GROUNDS MAINTENANCE				
	OPERATING		AGS	36.50 * 1,910,005 A	36.50 * 1,910,005 A
35.	AGS233 - CENTRAL SERVICES - BUILDING REPAIRS AND ALTERATIONS				
	OPERATING		AGS	39.00 * 2,958,625 A	39.00 * 2,958,625 A
36.	AGS240 - STATE PROCUREMENT				
	OPERATING		AGS	19.00 * 1,121,661 A	19.00 * 1,121,661 A
37.	AGS244 - SURPLUS PROPERTY MANAGEMENT				
	OPERATING		AGS	5.00 * 1,763,623 W	5.00 * 1,763,623 W
38.	AGS251 - AUTOMOTIVE MANAGEMENT - MOTOR POOL				
				12.50 *	12.50 *



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		OPERATING	AGS	2,464,804 W	2,464,804 W
39.		AGS252 - AUTOMOTIVE MANAGEMENT - PARKING CONTROL		24.50 *	24.50 *
		OPERATING	AGS	3,367,458 W	3,367,458 W
40.		AGS901 - GENERAL ADMINISTRATIVE SERVICES		38.00 *	38.00 *
		OPERATING	AGS	2,860,043 A	2,800,697 A
			AGS	2.00 *	2.00 *
				145,290 U	145,290 U
41.		SUB401 - COUNTY OF MAUI INVESTMENT CAPITAL	COM	3,250,000 C	C
42.		SUB501 - COUNTY OF KAUAI INVESTMENT CAPITAL	COK	3,450,000 C	C

## PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation for strategic marketing and support (BED 100), the sum of \$33,143 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$33,143 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for Hawai'i community-based economic development; and provided further that the program shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 5. Provided that of the special fund appropriation for plant, pest, and disease control (AGR 122), the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$200,000 for fiscal year 2010-2011 shall be expended by the department of agriculture for improving the Invicta system for plant and pest detection.

SECTION 6. Provided that of the special fund appropriation for plant, pest, and disease control (AGR 122), the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2009-2010, and the sum of \$2,000,000 for fiscal year 2010-2011, shall be expended to study, control, and mitigate bee mite infestation in the state; provided further that these funds shall be expended only in the amounts provided by the federal government and deposited into the pest inspection, quarantine, and eradication fund for this purpose; provided further that the funds shall be expended for no other purpose; provided further that the department shall prepare a report that shall include but not be limited to the status of the bee mite infestation and steps to control and treat the infestation; and provided further that the department submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 7. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$361,135 for fiscal year 2009-2010 and the sum of \$361,135 for fiscal year 2010-2011 shall be deposited

into the irrigation system revolving fund to be expended for the purposes of the fund.

SECTION 8. Provided that of the general and revolving fund appropriations for agricultural resource management (AGR 141), the sums of \$27,000 and \$74,000, respectively or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended for the purchase and installation of back flow preventers for the Waiahole irrigation system's users; provided further that these funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds.

SECTION 9. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$50,601 for fiscal year 2009-2010 and the sum of \$50,601 for fiscal year 2010-2011 shall be deposited into the Hawai'i agricultural development revolving fund to be expended for the purposes of the fund.

SECTION 10. Provided that of the revolving fund appropriation for agribusiness and research (AGR 161), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended to pay-off a loan and buy-out a shareholder of the Hawai'i county slaughterhouse; provided further that these funds shall not be expended for any other purpose; provided further that any unexpended or unencumbered general funds shall lapse to the revolving fund.

SECTION 11. Provided that of the revolving fund appropriation for agribusiness and research (AGR 161), the sum of \$199,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be used for the the purchase and installation of back flow preventers for the Waiahole irrigation system's users; provided further that the funds shall be expended from the Waiahole water system revolving fund; provided further that these funds shall not be expended for any other purpose; provided further that any unexpended or unencumbered special and general funds shall lapse to the revolving fund.

### TRANSPORTATION

SECTION 12. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special repair and maintenance projects in fiscal biennium 2009-2011 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
TRN 102	\$ 6,710,000	\$ 7,420,000
TRN 104	\$ 738,000	\$ 588,000
TRN 111	\$ 1,450,000	\$ 1,600,000
TRN 114	\$ 924,500	\$ 924,500
TRN 116	\$ 345,000	\$ 345,000
TRN 118	\$ 335,000	\$ 335,000
TRN 131	\$ 2,125,000	\$ 1,575,000
TRN 133	\$ 103,000	\$ 103,000
TRN 135	\$ 555,000	\$ 555,000
TRN 141	\$ 602,000	\$ 390,000
TRN 143	\$ 147,000	\$ 97,000
TRN 151	\$ 169,500	\$ 169,500
TRN 161	\$ 570,000	\$ 740,000
TRN 163	\$ 25,000	
TRN 195	\$ 3,000,000	\$ 3,000,000;

and provided further that any unexpended funds shall lapse to the airport special fund.

SECTION 13. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$58,955,199 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$80,536,236 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended from the airport revenue fund for the following purposes:

<u>Purpose</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
Interest and principal on revenue bonds	\$58,955,199	\$80,536,236;

provided further that any unexpended fund appropriation may be expended for principal and interest on revenue bonds payable from the passenger facility charge special fund, as necessary; and provided further that any unexpended funds shall lapse to the airport special fund.

SECTION 14. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$1,734,500 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$13,532,500 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended from the passenger facility charge special fund pursuant to section 261-5.5, Hawai'i Revised Statutes, and applicable federal laws and regulations, for the following purposes:

<u>Purpose</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
Interest and principal on revenue bonds	\$1,734,500	\$13,532,500;

provided further that any unexpended fund appropriation may be expended for principal and interest on revenue bonds payable from the airport revenue fund, as necessary; and provided further that any unexpended funds shall lapse to the passenger facility charge special fund.

SECTION 15. Provided that of the special fund appropriations for the harbors division (TRN 301-TRN 395), the following sums specified for special repair and maintenance projects in fiscal biennium 2009-2011 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
TRN 301	\$ 8,398,400	\$ 8,146,400
TRN 303	\$ 1,131,000	\$ 1,256,000
TRN 311	\$ 846,000	\$ 1,116,000
TRN 313	\$ 1,316,000	\$ 1,146,000
TRN 331	\$ 1,131,000	\$ 1,291,000
TRN 333	\$ 30,000	\$ 30,000
TRN 341	\$ 544,600	\$ 514,600
TRN 351	\$ 360,000	\$ 260,000
TRN 361	\$ 773,000	\$ 745,000
TRN 363	\$ 225,000	\$ 275,000;

and provided further that any unexpended funds shall lapse to the harbor special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further that if there are any transfers of the funds between programs that the approving authority for each violation of this proviso be disclosed in the report; provided

further that this report shall also include the previous three fiscal years; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 16. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$34,943,190 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$34,175,330 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
Interest and principal on general obligation bonds	\$ 2,894,467	\$ 3,428,688
Interest and principal on revenue bonds	\$ 32,048,723	\$30,746,642;

and provided further that any unexpended funds shall lapse to the harbor special fund.

SECTION 17. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 561), the following sums specified for special repair and maintenance projects in fiscal biennium 2009-2011 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
TRN 501	\$ 24,758,413	\$ 24,821,993
TRN 511	\$ 10,876,404	\$ 10,876,404
TRN 531	\$ 11,096,508	\$ 11,096,508
TRN 541	\$ 2,575,000	\$ 2,575,000
TRN 551	\$ 515,000	\$ 515,000
TRN 561	\$ 8,021,534	\$ 8,021,534;

and provided further that any unexpended funds shall lapse to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further that if there are any transfers of the funds between programs that the approving authority for each violation of this proviso be disclosed in the report; provided further that this report shall also include the previous three fiscal years; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 18. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$42,866,595 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$49,312,083 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
Interest and principal on general obligation bonds	\$ 13,081,894	\$ 13,081,894
Interest and principal on revenue bonds	\$ 29,784,701	\$36,230,189;

and provided that any unexpended funds shall lapse to the highway special fund.

## ENVIRONMENTAL PROTECTION

SECTION 19. Provided that of the special fund appropriation for native resources and fire protection program (LNR 402), the sum of \$3,000,000 or so much thereof as may be necessary and available for fiscal year 2009-2010 and the sum of \$3,000,000 or so much thereof as may be necessary and available for fiscal year 2010-2011 shall be expended by the department of land and natural resources as directed by the Hawai'i invasive species council to:

- (1) Prevent the introduction of invasive species;
- (2) Implement invasive species control;
- (3) Conduct research and outreach; and
- (4) Eradicate established invasive species;

provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the department shall prepare a report each year on the statewide strategic plan for invasive species prevention, control, research, and outreach partnership programs; provided further that the report shall also identify the short- and long-term needs of the program with specific performance outcomes; provided further that the report shall also identify all appropriation transfers (state and non-state) to other departments, including a detailed breakdown of matching non-state funds or equivalent services received by source, including dollar amounts, and how funds expended addressed the needs of the strategic plan and the strategic plan's performance outcomes; provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions; provided further that no funds shall be expended for the program unless matched on a dollar-for-dollar basis, up to \$3,000,000 in new federal, county, private, and other non-state funds or in-kind services for each fiscal year; provided further that the department shall jointly work with other agencies and the community; and provided further that portions of this appropriation may be transferred to other state departments to be expended for activities related to the statewide invasive species prevention, control, research, and outreach partnership program.

SECTION 20. Provided that of the general fund appropriation for native resources and fire protection program (LNR 402), the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2009-2010, and the sum of \$500,000, or so much thereof as may be necessary for 2010-2011 shall be expended by the department for invasive species support; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that portions of this appropriation may be transferred to other state departments to be expended for activities related to the statewide invasive species prevention, control, research, and outreach partnership program.

## HEALTH

SECTION 21. Provided that of the special fund appropriation for developmental disabilities (HTH 501), the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the partnerships in community living program; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 22.** Provided that of the special fund appropriation for family health (HTH 560), the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the healthy start program; provided further that the department shall prepare a detailed report evaluating the current program and making recommendations on how the program will be modified to address the desired public health objectives; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 23.** Provided that of the special fund appropriation for family health (HTH 560), the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the early intervention program; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 24.** Provided that of the special fund appropriation for community health services (HTH 580), the sum of \$1,533,716 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$1,533,716 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for chronic disease management and control; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 25.** Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$8,561,457 for fiscal year 2009-2010 and the sum of \$8,561,457 for fiscal year 2010-2011 shall be deposited into the emergency and budget reserve fund.

**SECTION 26.** Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$14,296,096 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$14,296,096 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department of health for purposes specified in section 328L-4, Hawai'i Revised Statutes; provided further that a sum not to exceed \$5,707,638 of the special fund appropriation for fiscal year 2009-2010 and a sum not to exceed \$5,707,638 of the special fund appropriation for fiscal year 2010-2011 shall be transferred to the department of human services to be expended for the children's health insurance program, pursuant to section 328L-4, Hawai'i Revised Statutes; and provided further that the amount of moneys transferred shall not exceed the amount of expenditures anticipated for each fiscal year by the children's health insurance program.

**SECTION 27.** Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$3,709,965 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$3,709,965 or so much thereof as may be necessary for fiscal year 2010-2011 shall be deposited into the Hawai'i tobacco prevention and control trust fund; and provided further

that the Hawai'i Community Foundation, as the administrator of the trust fund, shall prepare a detailed report on the financial condition, use of funds, and performance outcomes for the trust fund; and provided further that the Hawai'i Community Foundation shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 28. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$15,981,387 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$15,981,387 or so much thereof as may be necessary for fiscal year 2010-2011 shall be deposited into the university revenue-undertakings fund.

SECTION 29. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$14,554,477 for fiscal year 2009-2010 and the sum of \$14,554,477 for fiscal year 2010-2011 shall be deposited into the general fund.

SECTION 30. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$376,953 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$376,953 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for respite care; provided further that the department shall prepare a detailed report on the expenditures for respite care; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 31. Provided that of the general fund appropriation for Hawai'i health systems corporation – corporate office (HTH 210), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be used for a comprehensive review and evaluation of Hawai'i health systems corporation; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report that shall include but not be limited to the following information:

- (1) A comprehensive facility-by-facility review of operations, detailing efficiencies, deficiencies, and any recommendations for corrective action;
- (2) Overall recommendations on improving effectiveness and efficiencies system-wide;
- (3) Determination of responsibilities of facility administration, regional boards, corporate office, and Hawai'i health systems corporation corporate board;
- (4) Determination of centralized services required by the facilities to be provided by the corporate office;
- (5) Performance benchmarks to be reported to the Legislature prior to the commencement of each regular session and upon request; and
- (6) Recommendations on transition plans deemed necessary;
- (7) Evaluation of effectiveness of the current legal structure and adherence to the state procurement code and salary structure;
- (8) Measures taken to address material control weaknesses and reporting issues cited in audits performed by the state auditor and HHSC's external auditor during fiscal year 2007-2008 and fiscal year 2008-2009;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 regular session.

**SECTION 32.** Provided that of the general fund appropriation for Hawai'i health systems corporation – regions (HTH 212), the sum of \$14,300,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended by Hawai'i health systems corporation to the extent possible for Medicaid eligible services; and provided further that any unexpended funds shall lapse to the general fund.

**SECTION 33.** Provided that of the general fund appropriation for Hawaii health systems corporation – regions (HTH 212), the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended to purchase a mobile medical van; provided further that a program to hire medical personnel to operate and staff a mobile medical van shall be created by the Kona community hospital; provided further that this program shall establish routes and services for the areas of South Kona, Ka'u, and upper Puna; provided further that this program shall work with the department of education to provide medical services to schools in the aforementioned areas; provided further that no funds shall be expended unless an agreement has been established with an appropriate funding agency, public or private, to provide the Kona community hospital with funding to continue the mobile medical van program for not less than additional two years.

**SECTION 34.** Provided that of the special fund appropriation for health status monitoring (HTH 760), the sum of \$90,490 for fiscal year 2009-2010 and the sum of \$90,490 for fiscal year 2010-2011 shall be expended to automate the marriage registration system; and provided further that the department of health prepare a detailed report on the funds appropriated to automate the marriage registration system in fiscal year 2007-2008 and fiscal year 2008-2009; and provided further that the department of health shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 regular session.

### **SOCIAL SERVICES**

**SECTION 35.** Provided that of the general fund appropriation for health care payments (HMS 401), the sum of \$4,800,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$5,700,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be utilized to draw down additional federal matching funds specifically for the benefit of Hawai'i health systems corporation (HHSC); provided that the aforementioned general fund appropriations and the resulting federal matching funds shall be provided as supplemental payments through Quest and Quest Expanded health plans to HHSC facilities; provided further that these payments shall be in addition to the \$6,900,000 in supplemental payments currently being paid to HHSC facilities by the Quest Expanded health plans; and provided further that in the event that additional funding for the benefit of HHSC is made unavailable, any unexpended funds shall be transferred to Hawai'i health systems corporation - regions (HTH 212).



## FORMAL EDUCATION

SECTION 36. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$5,000,000 for fiscal year 2009-2010 and the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department of education for restructuring schools under No Child Left Behind requirements; provided further that the department shall prepare a report that shall include but not be limited to evaluations from each educational consultant assigned to each school on the progress of restructuring under No Child Left Behind, and the spending per school for restructuring under No Child Left Behind; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 37. Provided that of the general fund appropriation for comprehensive student support services (EDN 150), the sum of \$230,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended by the early learning council for the operations of the council; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund.

SECTION 38. Provided that of the general fund appropriation for instructional support (EDN 200), the sum of \$607,814 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$607,814 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department to address the needs of homeless students across the state; provided further that the department shall prepare a report that shall include but not be limited to a detailed breakout of services provided and costs incurred, including outcome and performance reports on each service provided; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 39. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$52,732,012 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$52,746,554 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by charter schools to fund their educational programs; provided further that the funds shall not be expended for any other purpose; provided further that the charter schools shall prepare a report that shall include but not be limited to a detailed breakout of the all means of financing budget for the current and next fiscal year and actual expenditures for the last completed fiscal year for each charter school along with a report of all other funds expended on behalf of each school; and provided further that the charter schools administrative office shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 40. Provided that charter schools (EDN 600) shall compile a report for each charter school of each use of the authority of each local school to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees granted by chapter 302B-7, Hawai'i Revised Statutes; provided further that this report shall cover the last completed fiscal year and the current fiscal year; and provided further that the charter schools administrative office shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 41. Provided that charter schools (EDN 600) shall compile a report for each charter school on the internal policies and procedures for the procurement of goods, services, and construction for each school and also the level of conformity with the goals of public accountability and public procurement practices for each school; provided further that this report shall include but not be limited to an evaluation of the benefits for each charter school as a result of being exempt from the requirements of chapter 103D, Hawai'i Revised Statutes, and discussion on the frequency with which charter schools and their local school boards use the provisions of chapter 103D, Hawai'i Revised Statutes; provided further that this report shall cover the last completed fiscal year and the current fiscal year; and provided further that the charter schools administrative office shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 42. Provided that of the general fund appropriation for the University of Hawai'i (UOH 100-UOH 900), the amount necessary to maintain fiscal year 2008-2009 support for security and prevention measures shall be expended for fiscal year 2009-2010 and fiscal year 2010-2011; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 43. Provided that of the general fund appropriation for University of Hawai'i systemwide support (UOH 900), the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used to fund the B-Plus scholarship program; provided further that the funds shall be deposited into the University of Hawai'i student scholarship and assistance special fund; provided further that the University of Hawai'i shall offer a scholarship to any Hawai'i resident who:

- (1) Enrolls in any campus within the University of Hawai'i system;
- (2) Has graduated from a Hawai'i public high school with a cumulative grade point average 3.0 or better; and
- (3) Is eligible for need-based financial aid based on federal financial aid guidelines;

provided further that the scholarship may be renewed annually if the student maintains satisfactory academic progress and continues to meet financial aid guidelines; and provided further that any unexpended funds shall lapse to the general fund.

## PUBLIC SAFETY

SECTION 44. Provided that of the general fund appropriation for O'ahu community correctional center (PSD 407), the sum of \$309,516 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$540,733 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department of public safety to establish and implement the electronic monitoring pilot program for eligible committed persons; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report that shall include but not be limited to the following information:

- (1) Status of the electronic monitoring pilot program;
- (2) Appropriate measures of effectiveness;
- (3) Number of committed persons participating in program;
- (4) Number of violations of program rules and regulations;
- (5) Any instances of participants re-offending;

- (6) Finding and recommendations; and
- (7) Determination of success of program and whether to continue pilot program;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 45. Provided that of the general fund appropriation for sheriff (PSD 503), six (6.00 FTE) positions and the sum of \$414,240 or so much thereof as may be necessary for fiscal year 2009-2010 and six (6.00 FTE) positions and the sum of \$261,240 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended to establish three additional warrant teams; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare quarterly reports beginning the first quarter of FY 2009-2010 that shall include but not be limited to the following:

- (1) Number of warrants served, broken down by type, for the current fiscal year and previous two fiscal years;
- (2) Per cent of warrants served, broken down by type, for the current fiscal year and previous two fiscal years;

and provided further that the department shall submit the report to the legislature no later than thirty days after the last day of the quarter.

SECTION 46. Provided that for sheriff (PSD 503) the sheriff division of the department of public safety shall adopt procedures to ensure that all funds received by deputy sheriffs for special duty assignments are reported to federal and state taxing authorities; provided further that the procedures shall be implemented by October 1, 2009; provided further that the department shall prepare a report on special duty assignments that shall include the following:

- (1) Implemented policies and procedures covering special duty assignments including a description of how the department is ensuring that all funds received by deputy sheriffs for special duty assignments are reported to federal and state taxing authorities;
- (2) A detail of amounts charged to each state agency for deputy sheriff special duty assignments;
- (3) The total amount received by each deputy sheriff for special duty assignments with state agencies and the amount received for special duty assignments with non-state agencies;
- (4) The average amount of overtime paid, if any, to deputy sheriffs for special duty assignments; and
- (5) The average amount of other income paid to deputy sheriffs for special duty assignments;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular session.

SECTION 47. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$12,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$12,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be made available to be established as a separate account for a protocol fund to be expended at the discretion of the executive head of the department of public safety to cover expenditures incurred in connection with incentivizing employees in efforts to reduce sick leave abuse and high overtime costs; provided further that the department of

public safety shall prepare a report that shall include but not be limited to the following information:

- (1) A description of incentive programs maintained by the fund;
- (2) A detail of expenditures from the fund; and
- (3) Overall success of incentive programs, focusing on its impact on sick leave abuse and overtime costs;

and provided further that the department of public safety shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 48. Provided further that of the general fund appropriation for prevention of natural disasters (LNR 810), the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2009-2010 shall be expended to protect property and lives along Pokiwai Stream; provided further that these funds not be used for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 49. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for relief from major disasters pursuant to section 127-11, Hawai'i Revised Statutes; and provided further that any unexpended funds shall lapse to the general fund.

## GOVERNMENT-WIDE SUPPORT

SECTION 50. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for the governor's "contingent fund" pursuant to section 37-71(f), Hawai'i Revised Statutes; and provided further that the funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise.

SECTION 51. Provided that of the general fund appropriation for departmental administration and budget division (BUF 101), the sum of \$672,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$672,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended as a subsidy to the Bishop Museum; provided further that any unexpended funds shall lapse to the general fund.

SECTION 52. Provided that of the general fund appropriation for office of elections (AGS 879), the sum of \$2,800,000 or so much thereof as may be necessary for fiscal year 2009-2010 shall be used for the state's portion of the voting system contract and the purchase of voting equipment; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the sum of \$26,316 of aforementioned appropriation be used to obtain \$500,000 in additional federal funds; provided further that said \$500,000 in federal funds be applied to the voting system contract for the 2010 elections; provided further

that the department shall prepare a quarterly report beginning the first quarter of FY 2009-2010 that shall include but not be limited to the following:

- (1) A detailed list of expenditures that were procured with the \$2,800,000 in general funds;
- (2) A detailed list of encumbrances or budgeted expenditures for the remainder of FY 2009-2010;
- (3) The amount expected to lapse, if any;

and provided further that the department shall submit the report to the legislature no later than thirty days after the last day of the quarter.

SECTION 53. Provided that of the general fund appropriation for office of elections (AGS 879), the sum of \$113,791 or so much thereof may be necessary for fiscal year 2009-2010 and the sum of \$113,791 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for 14.5 civil service positions converted from exempt under Act 213, Session Laws of Hawai'i 2007; provided further that only the amount needed to fund the difference between the exempt position salaries and the actual salary requirements of the civil service positions shall be expended; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report detailing:

- (1) The positions converted to civil service;
- (2) The status of each of the 14.5 positions not yet converted to civil service and reason for the delay of conversion; and
- (3) The actual additional amount needed to convert each of the 14.5 exempt positions to civil service for the most recently completed fiscal year;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 54. Provided that the office of elections (AGS 879), to the extent feasible and legal, shall use federal funds for expenditures related to the 2010 election voting system contract prior to expending general funds; provided further that the department shall prepare a report to include the following:

- (1) All expenditures made from federal funds for the current fiscal year and previous two fiscal years;
- (2) A detailed justification of the amount of federal funds expected to be expended for the 2010 election voting system contract;
- (3) A detailed budget of expenditures of federal funds for fiscal year 2009-2010 and fiscal year 2010-2011;
- (4) For each general and primary election held within the past 6 years, the number of persons eligible to vote, the number of persons registered to vote, and the number of persons that voted broken down by method of voting;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 regular session.

SECTION 55. Provided that the office of elections (AGS 879) prepare quarterly reports beginning in the first quarter of fiscal year 2010-2011 to include the following:

- (1) An updated list of vacant positions, noting current recruitment status;

- (2) A detail of travel and overtime expenditures for the quarter, including justification or reason for expenditure;
  - (3) A detailed listing of milestones, accomplishments, and activities of the chief elections officer and each section occurring during the quarter;
  - (4) Updated planning timeline for the 2010 elections, including justification of any changes from the previously reported timeline;
- and provided further that the department shall submit the report to the legislature no later than thirty days after the last day of each quarter.

SECTION 56. Provided that the office of elections (AGS 879) shall perform an in-depth analysis on voting precincts prior to issuing a request for proposal (RFP) on the state's new election voting system; provided further that this analysis shall enable the department to recognize opportunities for cost savings and operational efficiencies and that such findings be taken into consideration when crafting the RFP; provided further that the department shall submit the analysis and findings to the legislature prior to issuing the RFP; provided further that the department shall submit to the legislature a timeline for the procurement of the state's new election voting system; provided further that the department shall inform the legislature upon completion of each phase in the procurement process, and provided further that the department shall submit to the legislature any documents related to the procurement process allowable under HRS §103D within five working days after documents are made open to the public.

SECTION 57. Provided that of the general fund appropriations for debt service payments (BUF 721-BUF 728), the following sums specified in fiscal biennium 2009-2011 shall be expended for principal and interest payments on general obligation bonds only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
BUF 721	\$ 223,937,085	\$ 229,918,270
BUF 725	\$ 194,793,118	\$ 204,995,708
BUF 728	\$ 72,092,672	\$ 75,868,637;

provided further that unrequired balances may be transferred only to retirement benefits payments (BUF 741-BUF 748) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 58. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer's share of the employees' retirement system's pension accumulation only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
BUF 741	\$ 177,304,535	\$ 179,520,843
BUF 745	\$ 177,504,717	\$ 179,723,525
BUF 748	\$ 79,280,371	\$ 80,271,377;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 59. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer's share of the social security/Medicare payment for employees only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
BUF 741	\$ 86,682,151	\$ 87,765,678
BUF 745	\$ 89,554,231	\$ 90,673,659
BUF 748	\$ 38,914,935	\$ 39,401,370;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 60. Provided that of the general fund appropriations for health premium payments (BUF 761-BUF 768), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer's share of health premiums for active employees and retirees only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
BUF 761	\$ 174,721,854	\$ 190,204,383
BUF 765	\$ 182,617,125	\$ 197,937,761
BUF 768	\$ 63,937,201	\$ 69,839,777;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and retirement benefits payments (BUF 721-BUF 748); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 61. Provided that of the special fund appropriation for public lands management (LNR 101), the sum of \$50,000 for fiscal year 2009-2010 shall be expended for the university of Hawai'i sea grant program; provided further that the funds shall be expended from the beach restoration special fund; and provided further that this amount shall be added to the existing Kailua Beach erosion study.

#### **PART IV. CAPITAL IMPROVEMENT PROJECTS**

SECTION 62. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
A. ECONOMIC DEVELOPMENT					
AGR141 - AGRICULTURAL RESOURCE MANAGEMENT					
1.	P10001	WAIMEA HYDROPOWER PLANT, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE WAIMEA HYDROPOWER PLANT.			
		PLANS		175	
		DESIGN		175	
		CONSTRUCTION			1,000
		TOTAL FUNDING	AGR	350 C	1,000 C
2.	P10003	WAIMEA TRANSFER DITCH IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMEA TRANSFER DITCH.			
		DESIGN		200	
		CONSTRUCTION			2,000
		TOTAL FUNDING	AGR	200 C	2,000 C
3.	P10005	WAI AHOLE DITCH IRRIGATION SYSTEM, RESERVOIRS 155 AND 225 IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO RESERVOIRS 155 AND 225 ON THE WAI AHOLE DITCH SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		200	
		CONSTRUCTION			6,095
		TOTAL FUNDING	AGR	50 C	1,500 C
			AGR	150 N	4,595 N
4.	P10008	KAHUKU AGRICULTURAL PARK SUBDIVISION MISCELLANEOUS IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS TO THE KAHUKU AGRICULTURAL PARK SUBDIVISION.			
		DESIGN		40	
		CONSTRUCTION		160	
		TOTAL FUNDING	AGR	200 C	C
5.	200401	STATE AGRICULTURAL WATER AND USE DEVELOPMENT PLAN, STATEWIDE			
		PLANS TO CONTINUE THE STATE AGRICULTURAL WATER PLAN AS MANDATED BY ACT 101, SLH 1998. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		400	
		TOTAL FUNDING	AGR	200 C	C
			AGR	200 N	N



## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
6.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.			
		DESIGN		50	
		CONSTRUCTION		3,450	
		TOTAL FUNDING	AGR	3,500 C	C
7.		MULTIPURPOSE RESEARCH AND DEVELOPMENT FACILITY FOR THE PRODUCTION OF VALUE ADDED AGRICULTURAL PRODUCTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO REPAIR AND MODIFY THE FORMER DEL MONTE FACILITY TO FURTHER THE VALUE ADDED AGRICULTURAL INDUSTRY, PROVIDED THAT NO FUNDS SHALL BE MADE AVAILABLE UNLESS MATCHED DOLLAR-FOR-DOLLAR IN CASH OR BY IN-KIND DONATIONS BY THE PRIVATE SECTOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		498	4,000
		TOTAL FUNDING	AGR	250 C	2,000 C
			AGR	1 N	1 N
			AGR	248 R	2,000 R
			AGR	1 S	1 S
8.		MULTIPURPOSE RESEARCH AND DEVELOPMENT FACILITY FOR THE PRODUCTION OF VALUE ADDED AGRICULTURAL PRODUCTS, MAUI			
		PLANS, DESIGN AND CONSTRUCTION TO REPAIR AND MODIFY FACILITIES AT MAUI COMMUNITY COLLEGE TO FURTHER THE VALUE ADDED AGRICULTURAL INDUSTRY, PROVIDED THAT NO FUNDS SHALL BE MADE AVAILABLE UNLESS MATCHED DOLLAR-FOR-DOLLAR IN CASH OR BY IN-KIND DONATIONS BY THE PRIVATE SECTOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		250	2,200
		TOTAL FUNDING	AGR	125 C	1,100 C
			AGR	1 N	1 N
			AGR	125 R	1,100 R
			AGR	1 S	1 S

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
			M O F	M O F
AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE				
9.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE		
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE.		
		DESIGN	100	
		CONSTRUCTION	400	
		TOTAL FUNDING AGS	500 C	C
LNR141 - WATER AND LAND DEVELOPMENT				
10.	J42C	ROCKFALL AND FLOOD MITIGATION, STATEWIDE		
		PLANS, DESIGN, AND CONSTRUCTION FOR ROCKFALL AND FLOOD MITIGATION AT VARIOUS LOCATIONS, STATEWIDE. THE LEGISLATURE FINDS AND DECLARES THAT THIS APPROPRIATION IS IN THE PUBLIC INTEREST AND FOR THE PUBLIC'S HEALTH, SAFETY AND GENERAL WELFARE OF THE STATE.		
		PLANS	1	1
		DESIGN	1	1
		CONSTRUCTION	1,998	1,998
		TOTAL FUNDING LNR	2,000 C	2,000 C
11.		UPCOUNTRY MAUI GROUND WATER WELL, MAUI		
		PLANS AND DESIGN FOR A TEST WELL IN UPCOUNTRY MAUI TO SERVE AS THE FIRST PHASE IN THE CONSTRUCTION OF A GROUND WATER WELL TO SUPPLEMENT THE UPCOUNTRY SURFACE WATER SYSTEM.		
		PLANS	50	
		DESIGN	100	
		TOTAL FUNDING LNR	150 C	C
BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				
12.	HCD001	HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS, OAHU		
		PLANS FOR COSTS RELATED TO WAGES AND FRINGE BENEFITS FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE.		
		PLANS	1,855	1,855
		TOTAL FUNDING BED	1,855 C	1,855 C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.		CULTURAL PUBLIC MARKET, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE KEWALO KEIKI FISHING CONSERVANCY.			
		PLANS		1	
		LAND		1	
		DESIGN		299	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	BED	2,301C	C
14.		KEWALO BASIN, OAHU			
		CONSTRUCTION FOR MISCELLANEOUS BIKE PATH IMPROVEMENTS.			
		CONSTRUCTION		40	
		TOTAL FUNDING	BED	40C	C
<b>BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION</b>					
15.	HFDC04	RENTAL HOUSING TRUST FUND INFUSION, STATEWIDE			
		CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL AFFORDABLE RENTAL HOUSING STATEWIDE.			
		CONSTRUCTION		30,000	
		TOTAL FUNDING	BED	30,000C	C
16.	HFDC05	DWELLING UNIT REVOLVING FUND, STATEWIDE			
		CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL WORKFORCE AND AFFORDABLE HOUSING STATEWIDE.			
		CONSTRUCTION		10,000	10,000
		TOTAL FUNDING	BED	10,000C	10,000C
17.		RENTAL APARTMENT COMPLEX, KAKAAKO, OAHU			
		LAND ACQUISITION FOR A 235 UNIT RENTAL COMPLEX FACILITY IN KAKAAKO, OAHU.			
		LAND		6,500	
		TOTAL FUNDING	BED	6,500C	C

**B. EMPLOYMENT****LBR903 - OFFICE OF COMMUNITY SERVICES**

1.	EASTER SEALS HAWAII, OAHU				
	CONSTRUCTION FOR A MULTI-PROGRAM SERVICE CENTER IN WEST OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
	CONSTRUCTION			275	
	TOTAL FUNDING	LBR		275C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
2.		FILIPINO COMMUNITY CENTER, OAHU			
		PLANS AND CONSTRUCTION FOR THE INSTALLATION OF A RETRACTABLE ROOF OVER THE COURTYARD AT THE FILIPINO COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		CONSTRUCTION		850	
		TOTAL FUNDING	LBR	851C	C
3.		HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL, HAWAII			
		EQUIPMENT TO PURCHASE NEW BUSES WITH WHEELCHAIR ACCOMMODATIONS TO REPLACE OLD BUSES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		EQUIPMENT		120	
		TOTAL FUNDING	LBR	120C	C
4.		KA LIMA O MAUI, LTD., MAUI			
		PLANS FOR FACILITIES AND AFFORDABLE HOUSING FOR THE CONSUMERS SERVED BY KA LIMA O MAUI, LTD. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		250	
		TOTAL FUNDING	LBR	250C	C
5.		MAUI ECONOMIC OPPORTUNITY, INC., MAUI			
		CONSTRUCTION FOR A BUS BUILDING TO HOUSE AND PROVIDE MAINTENANCE FACILITIES FOR THE MAUI ECONOMIC OPPORTUNITY BUS SYSTEM ON MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		3,000	
		TOTAL FUNDING	LBR	3,000C	C
6.		MAUI FAMILY YMCA, MAUI			
		CONSTRUCTION TO RENOVATE THE YMCA FACILITY IN KAHULUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		250	
		TOTAL FUNDING	LBR	250C	C
7.		WAIKIKI COMMUNITY CENTER, OAHU			
		CONSTRUCTION FOR ELECTRICAL IMPROVEMENTS AT THE WAIKIKI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		226	
		TOTAL FUNDING	LBR	226C	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
8.		CFS REAL PROPERTY, INC., KAUAI			
		DESIGN AND CONSTRUCTION FOR ACQUISITION, RENOVATION AND OTHER IMPROVEMENTS FOR HALE HO'OMALU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		100	
		CONSTRUCTION		300	
		TOTAL FUNDING LBR		400 C	
9.		KAUAI ECONOMIC OPPORTUNITY, INC., KAUAI			
		LAND ACQUISITION FOR THE KAUAI ECONOMIC OPPORTUNITY FOOD SERVICE PROGRAM/COMMUNITY ENTERPRISE KITCHEN. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND		200	
		TOTAL FUNDING LBR		200 C	
HMS802 - VOCATIONAL REHABILITATION					
10.		ARC OF HILO, HAWAII			
		CONSTRUCTION FOR THE CLIENT SUPPORT SERVICES COMMUNITY AND TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		550	
		TOTAL FUNDING HMS		550 C	
C. TRANSPORTATION FACILITIES					
TRN102 - HONOLULU INTERNATIONAL AIRPORT					
1.	A11E	HONOLULU INTERNATIONAL AIRPORT, ELLIOTT STREET SUPPORT FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR SUPPORT FACILITIES NEAR ELLIOTT STREET INCLUDING MAINTENANCE FACILITIES, CARGO FACILITIES, RELOCATION OF TAXIWAYS, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		275	
		CONSTRUCTION		71,090	19,750
		TOTAL FUNDING TRN		71,365 E	19,750 E
2.	A23L	HONOLULU INTERNATIONAL AIRPORT, RECONSTRUCT TAXIWAYS AND RUNWAYS, OAHU			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS.			
		DESIGN		922	
		CONSTRUCTION		6,286	5,951
		TOTAL FUNDING TRN		7,208 E	5,951 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
3.	A23M	HONOLULU INTERNATIONAL AIRPORT, AIRFIELD WATERLINE REPLACEMENT, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF 12" AIRFIELD WATERLINE, 6" LAGOON DRIVE WATERLINE AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		9,035	
		TOTAL FUNDING TRN		9,035 E	E
4.	A41P	HONOLULU INTERNATIONAL AIRPORT, INTERNATIONAL ARRIVALS BUILDING CEILING REPLACEMENT, OAHU			
		CONSTRUCTION FOR CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		16,000	
		TOTAL FUNDING TRN		16,000 E	E
5.	A41Q	HONOLULU INTERNATIONAL AIRPORT, NEW MAUKA CONCOURSE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR A NEW COMMUTER TERMINAL AND NEW MAUKA CONCOURSE NEAR THE INTERISLAND TERMINAL, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		6,574	
		CONSTRUCTION		332,406	
		TOTAL FUNDING TRN		338,980 E	E
6.	A41S	HONOLULU INTERNATIONAL AIRPORT, PROGRAM MANAGEMENT, OAHU			
		DESIGN FOR PROGRAM MANAGEMENT OF THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		33,567	24,000
		TOTAL FUNDING TRN		33,567 E	24,000 E
7.	A41T	HONOLULU INTERNATIONAL AIRPORT, ISOLATION UNITS AT GATES 33 AND 34, OAHU			
		CONSTRUCTION OF TWO PASSENGER QUARANTINE FACILITIES AT THE EXISTING GROUND FLOOR LEVEL OF GATES 33 AND 34, AND RELATED IMPROVEMENTS.			
		CONSTRUCTION			22,000
		TOTAL FUNDING TRN		E	22,000 E
8.	A23F	HONOLULU INTERNATIONAL AIRPORT, ENGINE RUN-UP PAD, OAHU			
		DESIGN FOR AN AIRCRAFT ENGINE RUN-UP PAD AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			400
		TOTAL FUNDING TRN		E	400 E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2009-2010 F	YEAR O 2010-2011 F
9.	A43J	HONOLULU INTERNATIONAL AIRPORT, INTERISLAND MAINTENANCE FACILITY, OAHU			
		CONSTRUCTION FOR AN INTERISLAND MAINTENANCE FACILITY AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		8,150	
		TOTAL FUNDING TRN		8,150 E	E

## TRN104 - GENERAL AVIATION

10.	A71C	KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEM AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		800	800
		CONSTRUCTION		10,450	10,450
		TOTAL FUNDING TRN		1,750 E	1,750 E
			TRN	9,500 N	9,500 N
11.	A72B	DILLINGHAM AIRFIELD, WATER SYSTEM REPLACEMENT, OAHU			
		DESIGN FOR REMOVAL OF EXISTING AND INSTALLATION OF A NEW POTABLE WATER SYSTEM AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			800
		TOTAL FUNDING TRN		E	800 E

## TRN111 - HILO INTERNATIONAL AIRPORT

12.	B10M	HILO INTERNATIONAL AIRPORT, ARFF FACILITY IMPROVEMENTS, HAWAII			
		DESIGN FOR THE RENOVATION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		605	
		TOTAL FUNDING TRN		605 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
13.	B10N	HILO INTERNATIONAL AIRPORT, NOISE ATTENUATION FOR KEAUKAHA SUBDIVISION, HAWAII			
		CONSTRUCTION FOR NOISE ATTENUATION OF RESIDENTIAL DWELLINGS ADJACENT TO HILO INTERNATIONAL AIRPORT WITHIN THE 65-75 DNL CONTOUR RANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			11,000
		TOTAL FUNDING	TRN	E	2,288 E
			TRN	N	8,712 N
14.	B10Q	HILO INTERNATIONAL AIRPORT, PERIMETER ROAD AND SECURITY FENCE, HAWAII			
		CONSTRUCTION OF A PERIMETER ROAD AND AIRFIELD FENCE TO MEET SAFETY AND SECURITY REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,798
		TOTAL FUNDING	TRN	E	548 E
			TRN	N	2,250 N
15.	B10T	HILO INTERNATIONAL AIRPORT, RECONSTRUCT T-HANGARS, HAWAII			
		CONSTRUCTION FOR THE DEMOLITION OF EXISTING T-HANGARS AND RECONSTRUCTION OF NEW T-HANGARS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		1,531	
		TOTAL FUNDING	TRN	1,531 E	E
16.	B10V	HILO INTERNATIONAL AIRPORT, TAXIWAY F IMPROVEMENTS, HAWAII			
		CONSTRUCTION FOR TAXIWAY F AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,550
		TOTAL FUNDING	TRN	E	480 E
			TRN	N	2,070 N
17.	B11B	HILO INTERNATIONAL AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, HAWAII			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,765	



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		TOTAL FUNDING	TRN	581 E	E
			TRN	2,184 N	N
<b>TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE</b>					
18.	C03T	KONA INTERNATIONAL AIRPORT AT KEAHOLE, TERMINAL EXPANSION, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR THE TERMINAL EXPANSION PROGRAM. INCLUDES RELOCATION OF TENANT FACILITIES, BAGGAGE CLAIM, ADDITIONAL HOLDROOMS, NEW TENANT SPACES, RESTROOM FACILITIES, INFRASTRUCTURE, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		PLANS		500	
		DESIGN		24,000	
		CONSTRUCTION		35,500	40,000
		TOTAL FUNDING	TRN	60,000 E	40,000 E
19.	C03X	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PROGRAM MANAGEMENT SUPPORT, HAWAII			
		DESIGN FOR PROGRAM MANAGEMENT OF THE EXPANSION PROGRAM FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500 B	B
20.	C05A	KONA INTERNATIONAL AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, HAWAII			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,947	
		TOTAL FUNDING	TRN	618 E	E
			TRN	2,329 N	N
21.	C10B	KONA INTERNATIONAL AIRPORT AT KEAHOLE, NOISE MONITORING SYSTEM, HAWAII			
		DESIGN FOR THE INSTALLATION OF A NOISE MONITORING SYSTEM AND OTHER RELATED IMPROVEMENTS.			
		DESIGN			100
		TOTAL FUNDING	TRN	E	100 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
22.	C10C	KONA INTERNATIONAL AIRPORT AT KEAHOLE, ARFF FACILITY IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS NECESSARY TO CONSTRUCT AN AIRCRAFT RESCUE AND FIRE FIGHTING STATION, TRAINING PIT, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		CONSTRUCTION		14,885	1,000
		TOTAL FUNDING	TRN	7,885 E	1,000 E
			TRN	8,000 N	N
TRN131 - KAHULUI AIRPORT					
23.	D04M	KAHULUI AIRPORT, ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			33,585
		TOTAL FUNDING	TRN	E	33,585 E
24.	D04O	KAHULUI AIRPORT, PROGRAM MANAGEMENT SUPPORT, MAUI			
		DESIGN FOR PROGRAM MANAGEMENT OF THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500 B	B
25.	D04P	KAHULUI AIRPORT, ELEVATOR AND ESCALATOR IMPROVEMENTS, MAUI			
		CONSTRUCTION FOR ELEVATOR AND ESCALATOR REPLACEMENT AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			6,460
		TOTAL FUNDING	TRN	E	6,460 E
26.	D04R	KAHULUI AIRPORT, FIRE SPRINKLER SYSTEM REPLACEMENT, MAUI			
		DESIGN FOR THE REPLACEMENT OF THE FIRE SPRINKLER AND FIRE SUPPRESSION SYSTEMS, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			400
		TOTAL FUNDING	TRN	E	400 E

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
27.	D08A	KAHULUI AIRPORT, RENTAL CAR FACILITY IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION TO PROVIDE PAVED OVERFLOW PARKING FOR THE RENTAL CAR AGENCIES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. (OTHER FUNDS FROM CUSTOMER FACILITY CHARGES).			
		DESIGN		800	
		CONSTRUCTION			5,500
		TOTAL FUNDING	TRN	800 X	5,500 X
28.	D08P	KAHULUI AIRPORT, WATER SYSTEM IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION FOR AN IMPROVED EFFICIENT WATER SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		250	
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	250 E	2,000 E
29.	D10B	KAHULUI AIRPORT, RECONSTRUCT TAXIWAYS, RUNWAYS, AND APRON, MAUI			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		DESIGN		22	
		CONSTRUCTION		3,500	44,120
		TOTAL FUNDING	TRN	3,522 E	120 E
			TRN	X	44,000 X

## TRN141 - MOLOKAI AIRPORT

30.	D55E	MOLOKAI AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, MOLOKAI			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,505	
		TOTAL FUNDING	TRN	314 E	E
			TRN	1,191 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

TRN151 - LANAI AIRPORT

31. D70D LANAI AIRPORT, ARFF STATION IMPROVEMENTS, LANAI

CONSTRUCTION FOR THE LANAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		7,655	
TOTAL FUNDING	TRN	1,445 E	E
	TRN	6,210 N	N

32. D70G LANAI AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, LANAI

CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		1,382	
TOTAL FUNDING	TRN	288 E	E
	TRN	1,094 N	N

TRN161 - LIHUE AIRPORT

33. E10A LIHUE AIRPORT, NOISE MONITORING SYSTEM, KAUAI

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A NOISE MONITORING SYSTEM AT LIHUE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		100	
CONSTRUCTION			746
TOTAL FUNDING	TRN	100 E	138 E
	TRN	N	608 N

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)			
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010	F	FISCAL M YEAR O 2010-2011	F
TRN195 - AIRPORTS ADMINISTRATION							
34.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.					
		PLANS		750		750	
		TOTAL FUNDING	TRN	750 B		750 B	
35.	F04L	AIRPORT PAVEMENT MANAGEMENT SYSTEM, STATEWIDE					
		PLANS FOR A PAVEMENT MANAGEMENT SYSTEM NEEDED TO COMPLY WITH FAA REQUIREMENTS FOR LARGE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		3,060			
		TOTAL FUNDING	TRN	560 B			B
			TRN	2,500 N			N
36.	F04P	AIRPORT LAYOUT PLAN UPDATE, STATEWIDE					
		PLANS TO UPDATE THE AIRPORT LAYOUT PLANS FOR ALL AIRPORTS, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		2,000			
		TOTAL FUNDING	TRN	500 B			B
			TRN	1,500 N			N
37.	F04Q	AIRPORT SYSTEM PLAN, STATEWIDE					
		PLANS FOR THE DEVELOPMENT OF THE AIRPORT SYSTEM PLAN FOR THE AIRPORTS DIVISION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		500			
		TOTAL FUNDING	TRN	500 B			B
38.	F05C	STRUCTURAL IMPROVEMENTS TO AIRFIELD PAVING, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS AT STATEWIDE AIRPORTS. IMPROVEMENTS INCLUDE PAVING, MILL AND REPLACE, RECONSTRUCTION, GROOVING, PAINTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		1,000	1,000
		CONSTRUCTION			6,350
		TOTAL FUNDING	TRN	1,000 E	1,887 E
			TRN	N	5,463 N
39.	F05D	LOADING BRIDGE MODERNIZATION, STATEWIDE			
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES, REMOVAL OF EXISTING LOADING BRIDGES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			13,250
		TOTAL FUNDING	TRN	E	13,250 E
40.	F05G	LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) BUILDING COMMISSIONING, STATEWIDE			
		CONSTRUCTION FOR A LEED BUILDING COMMISSIONING CONSULTANT TO ASSURE THAT AIRPORT BUILDINGS AND FACILITIES PERFORM IN ACCORDANCE WITH DESIGN INTENT AND OWNER'S OPERATIONAL NEEDS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		250	
		TOTAL FUNDING	TRN	250 B	B
41.	F05H	PERIMETER ROAD AND SECURITY FENCE, STATEWIDE			
		DESIGN OF A PERIMETER ROAD AND AIRFIELD FENCE TO MEET SAFETY AND SECURITY REQUIREMENTS.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500 B	B
42.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT STAFF COSTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		PLANS		300	300
		DESIGN		950	950
		CONSTRUCTION		1,300	1,300
		TOTAL FUNDING	TRN	2,450 B	2,450 B
			TRN	100 X	100 X

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
43.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		2,500	2,500
		TOTAL FUNDING	TRN	3,500 B	3,500 B
44.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.			
		CONSTRUCTION		300	300
		TOTAL FUNDING	TRN	300 B	300 B
45.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS, STATEWIDE.			
		DESIGN		1,250	
		TOTAL FUNDING	TRN	1,250 B	B
46.	F05I	AIRFIELD IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		CONSTRUCTION		85,100	
		TOTAL FUNDING	TRN	100 B	B
			TRN	85,000 X	X
47.	F05J	AIRPORT IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR IMPROVEMENTS AT STATEWIDE AIRPORTS PREVIOUSLY FUNDED AND FEDERAL AVIATION ADMINISTRATION APPROVED FOR PASSENGER FACILITY CHARGE REIMBURSEMENT. THIS PROJECT DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		CONSTRUCTION		96,600	
		TOTAL FUNDING	TRN	96,600 X	X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

TRN301 - HONOLULU HARBOR

48.	J41	IMPROVEMENTS TO PIERS 19-35, HONOLULU HARBOR, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO PIERS 19-35 AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		30,200	
		TOTAL FUNDING	TRN	30,200 B	B
49.	J42	HMP-KAPALAMA MILITARY RESERVATION IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. THIS IS A HARBOR MODERNIZATION PROJECT.			
		DESIGN		23,600	
		CONSTRUCTION		1,200	105,400
		TOTAL FUNDING	TRN	24,800 E	105,400 E

TRN303 - KALAELOA BARBERS POINT HARBOR

50.	J10	KALAELOA-BARBERS POINT HARBOR MODIFICATIONS, OAHU			
		PLANS AND DESIGN FOR DEEPENING OF THE TURNING BASIN AND CHANNEL MODIFICATIONS AT KALAELOA-BARBERS POINT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		500	
		DESIGN			1,000
		TOTAL FUNDING	TRN	500 B	1,000 B

TRN311 - HILO HARBOR

51.	L10	HILO HARBOR IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		1,700	
		CONSTRUCTION			10,000
		TOTAL FUNDING	TRN	1,700 B	10,000 B



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
52.	L12	HMP-PIER 4 INTERISLAND CARGO TERMINAL, HILO HARBOR, HAWAII			
		CONSTRUCTION FOR AN ADDITIONAL INTERISLAND CARGO TERMINAL AREA INCLUDING A PIER, YARD, ROADWAYS AND UTILITIES.			
		CONSTRUCTION			48,000
		TOTAL FUNDING	TRN	E	48,000 E

## TRN313 - KAWAIHAE HARBOR

53.	L09	NAVIGATIONAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		300	
		TOTAL FUNDING	TRN	300 B	B
54.	L14	HMP-PIER 2 TERMINAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, PAVING, UTILITIES, RELOCATION OF THE HARBOR AGENT'S OFFICE, AND INTERIM FERRY IMPROVEMENTS.			
		DESIGN		1,000	
		CONSTRUCTION		15,250	5,000
		TOTAL FUNDING	TRN	16,250 E	5,000 E
55.	L15	HMP-PIER 4, KAWAIHAE HARBOR, HAWAII			
		CONSTRUCTION OF TERMINAL IMPROVEMENTS ADJACENT TO THE FUTURE PROPOSED PIER 3/4 INTER-ISLAND TERMINAL BARGE FACILITY.			
		CONSTRUCTION		36,000	
		TOTAL FUNDING	TRN	36,000 E	E

## TRN331 - KAHULUI HARBOR

56.	M15	HMP-KAHULUI HARBOR LAND ACQUISITION AND IMPROVEMENTS, MAUI			
		CONSTRUCTION FOR IMPROVEMENTS OF THE ACQUIRED LAND INCLUDING DEMOLITION OF EXISTING STRUCTURES, PAVING, UTILITIES, LANDSCAPING, FENCING, AND OTHER RELATED SITEWORK IMPROVEMENTS.			
		CONSTRUCTION			33,000
		TOTAL FUNDING	TRN	E	33,000 E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
	2009-2010 F			2010-2011 F	
TRN363 - PORT ALLEN HARBOR					
57.	K03	COMFORT STATION IMPROVEMENTS, PORT ALLEN HARBOR, KAUAI			
		DESIGN AND CONSTRUCTION FOR COMFORT STATION IMPROVEMENTS TO THE PORT ALLEN SHED INCLUDING UTILITIES, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		500	
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	500 B	3,000 B
TRN395 - HARBORS ADMINISTRATION					
58.	I01	HARBOR PLANNING, STATEWIDE			
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.			
		PLANS		1,500	1,500
		TOTAL FUNDING	TRN	1,500 B	1,500 B
59.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		150	100
		CONSTRUCTION		650	400
		TOTAL FUNDING	TRN	800 B	500 B
60.	I05	MISCELLANEOUS IMPROVEMENTS TO PORT FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		50	50
		CONSTRUCTION		350	350
		TOTAL FUNDING	TRN	400 B	400 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
61.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES AT COMMERCIAL HARBOR FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		300	
		CONSTRUCTION		700	
		TOTAL FUNDING	TRN	1,000 B	B
62.	I08	REPLACEMENT OF TIMBER FENDERS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT COMMERCIAL HARBORS STATEWIDE.			
		DESIGN		500	
		CONSTRUCTION			2,600
		TOTAL FUNDING	TRN	500 B	2,600 B
63.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	1,000 B	B
64.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE			
		CONSTRUCTION FOR SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,000	4,500
		TOTAL FUNDING	TRN	2,000 B	B
			TRN	4,000 N	4,500 N
65.	I19	BOLLARD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR BOLLARD IMPROVEMENTS, STATEWIDE			
		DESIGN		300	
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	300 B	1,000 B
66.	I20	HMP CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION OF HARBOR MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		2,600	2,800
		TOTAL FUNDING	TRN	2,600 E	2,800 E

CAPITAL IMPROVEMENT PROJECTS					
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
67.	I21	HMP HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT HARBOR MODERNIZATION PLAN PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF HARBOR MODERNIZATION PLAN CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		786	840
		TOTAL FUNDING	TRN	786E	840E
TRN501 - OAHU HIGHWAYS					
68.	S221	KALANIANAOLE HIGHWAY, INOAOLE STREAM BRIDGE REPLACEMENT, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE WITH A LARGER BRIDGE, INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, DETOUR ROAD, AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	E	200E
			TRN	N	800N
69.	S230	WAIHAOLE BRIDGE REPLACEMENT, KAMEHAMEHA HIGHWAY, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING CONCRETE STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		4,000	
		TOTAL FUNDING	TRN	800E	E
			TRN	3,200N	N
70.	S231	KALANIANAOLE HIGHWAY IMPROVEMENTS, OLOMANA GOLF COURSE TO WAIMANALO BEACH PARK, OAHU			
		CONSTRUCTION OF TURNING LANES, SIDEWALKS, CURB RAMPS, BIKE PATHS OR BIKE ROUTES, UPGRADING TRAFFIC SIGNALS, UTILITY RELOCATION, DRAINAGE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		CONSTRUCTION			14,000
		TOTAL FUNDING	TRN	E	2,800 E
			TRN	N	11,200 N
71.	S246	INTERSTATE ROUTE H-1, WESTBOUND AFTERNOON (PM) CONTRAFLOW, OAHU			
		CONSTRUCTION FOR A PM CONTRAFLOW LANE ON INTERSTATE ROUTE H-1 FROM THE VICINITY OF RADFORD DRIVE TO THE VICINITY OF WAIKELE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		55,000	
		TOTAL FUNDING	TRN	7,000 E	E
			TRN	48,000 N	N
72.	S257	CASTLE HILLS ACCESS ROAD, DRAINAGE IMPROVEMENTS, OAHU			
		LAND ACQUISITION FOR STORM RETENTION STRUCTURES AND EROSION CONTROLS TO REPAIR STORM DAMAGE AND EROSION, AND CONSTRUCTING CONCRETE SIDEWALKS, WHEELCHAIR RAMPS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		200	
		TOTAL FUNDING	TRN	199 E	E
			TRN	1 N	N
73.	S266	GUARDRAIL AND SHOULDER IMPROVEMENTS, VARIOUS LOCATIONS, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			500
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	600 E	100 E
			TRN	2,400 N	400 N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
74.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.			
		PLANS			200
		DESIGN			200
		CONSTRUCTION		900	900
		TOTAL FUNDING	TRN	900 E	1,300 E
75.	S271	INTERSTATE ROUTE H-1 AND MOANALUA FREEWAYS IMPROVEMENTS, PUULOA INTERCHANGE TO KAPIOLANI INTERCHANGE, OAHU			
		CONSTRUCTION FOR AN ADDITIONAL LANE ON THE H-1 FREEWAY EASTBOUND LANES FROM THE VICINITY OF MIDDLE STREET TO THE VICINITY OF VINEYARD BOULEVARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		100,000	
		TOTAL FUNDING	TRN	20,000 E	E
			TRN	80,000 N	N
76.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OR REHABILITATION OF KAIPAPAU STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		460	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	600 E	E
			TRN	2,400 N	N
			TRN	460 X	X

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
77.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU			
		CONSTRUCTION FOR REPLACEMENT OF THE EXISTING BRIDGE ON KAMEHAMEHA HIGHWAY AT KAWELA STREAM WITH A LARGER BRIDGE INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, SEISMIC UPGRADES, TEMPORARY DETOUR ROAD, AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	200 E	E
			TRN	800 N	N
78.	S301	FARRINGTON HIGHWAY, MAKAHA BRIDGES NO. 3 AND NO. 3A REPLACEMENT, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF BRIDGES NO. 3 AND 3A IN THE VICINITY OF MAKAHA BEACH PARK TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			3,500
		TOTAL FUNDING	TRN	E	700 E
			TRN	N	2,800 N
79.	S307	KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU			
		CONSTRUCTION FOR REPLACEMENT OF KALUANUI STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	E	200 E
			TRN	N	800 N
80.	S329	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF WAIKANE STREAM BRIDGE, OAHU			
		LAND ACQUISITION FOR THE REHABILITATION OF WAIKANE STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		500	
		TOTAL FUNDING	TRN	100 E	E
			TRN	400 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
81.	S332	EROSION CONTROL PROGRAM FOR STATE HIGHWAYS AND FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR PERMANENT EROSION CONTROL MITIGATION MEASURES ON STATE HIGHWAYS AND FACILITIES ON OAHU.			
		DESIGN		200	
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	200B	1,000B
82.	S333	ENVIRONMENTAL REMEDIATION OF HIGHWAY FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL REMEDIATION MEASURES ON STATE HIGHWAYS AND FACILITIES.			
		PLANS		248	248
		DESIGN		1	1
		CONSTRUCTION		1	1
		TOTAL FUNDING	TRN	250B	250B
83.	S344	MISCELLANEOUS PERMANENT BEST MANAGEMENT PRACTICES, OAHU			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PERMANENT BEST MANAGEMENT PRACTICE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF STRUCTURAL AND NATURAL BEST MANAGEMENT PRACTICES AT VARIOUS LOCATIONS ON OAHU.			
		LAND		110	
		DESIGN		520	
		CONSTRUCTION			1,650
		TOTAL FUNDING	TRN	630B	1,650B
84.	SP0603	FARRINGTON HIGHWAY IMPROVEMENTS BETWEEN HONOKAI HALE AND HAKIMO ROAD, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS ALONG FARRINGTON HIGHWAY FOR ALTERNATIVE CONGESTION RELIEF AND/OR SAFETY IMPROVEMENT PROJECTS ALONG FARRINGTON HIGHWAY BETWEEN HONOKAI HALE AND HAKIMO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			7,500
		TOTAL FUNDING	TRN	E	1,500E
			TRN	N	6,000N
85.		KAMEHAMEHA HIGHWAY SIDEWALKS, OAHU			
		DESIGN AND CONSTRUCTION OF SIDEWALKS ALONG BOTH SIDES OF KAMEHAMEHA HIGHWAY FROM MEHEULA PARKWAY TO LANIKUHAHA AVENUE.			



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		500	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	2,500 E	E
86.		STREETLIGHT INSTALLATION AT RENTON ROAD AND ROOSEVELT AVENUE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO ADD A STREETLIGHT AT THE INTERSECTION OF RENTON ROAD AND ROOSEVELT AVENUE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		10	
		TOTAL FUNDING	TRN	12 E	E
87.		FARRINGTON HIGHWAY, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CROSSWALKS WITH BLINKING SIGNAGE OR SIMILAR DEVICES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		147	
		EQUIPMENT		1	
		TOTAL FUNDING	TRN	150 E	E
88.		NORTH SHORE, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STREETLIGHTS FROM CRAWFORD HOME TO THE ENTRANCE OF THE TURTLE BAY RESORT.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		720	
		EQUIPMENT		10	
		TOTAL FUNDING	TRN	750 E	E
89.		NORTH SOUTH ROAD EXTENSION, OAHU			
		DESIGN AND CONSTRUCTION FOR AN APPROXIMATE 1 MILE EXTENSION TO NORTH SOUTH ROAD TO COMPLETE THE NORTH SOUTH ROAD FROM THE H1 FREEWAY THROUGH TO KALAELOA, LOCATED BETWEEN KAPOLEI PARKWAY AND ROOSEVELT ROAD.			
		DESIGN		1,500	
		CONSTRUCTION		13,500	
		TOTAL FUNDING	TRN	7,500 C	C
			TRN	7,500 E	E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
90.		KAHEKILI AND KAMEHAMEHA HIGHWAYS, OAHU			
		DESIGN AND CONSTRUCTION FOR MULTI-USE PATHS ALONG KAHEKILI HIGHWAY FROM THE INTERSECTION WITH KAMEHAMEHA HIGHWAY TO THE INTERSECTION WITH HAIKU ROAD AND ALONG KAMEHAMEHA HIGHWAY FROM THE INTERSECTION WITH WAIHE'E ROAD TO THE INTERSECTION OF KAHEKILI HIGHWAY.			
		DESIGN		350	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	1,350 E	E
91.		WAIKUPANAHA STREET, OAHU			
		PLANS AND DESIGN FOR THE EXPANSION OF WAIKUPANAHA STREET.			
		PLANS		275	
		DESIGN		275	
		TOTAL FUNDING	TRN	550 E	E
92.	S341	INTERSTATE ROUTE H-1, CULVERT REPAIR, WAIMALU OFF-RAMP, OAHU			
		DESIGN AND CONSTRUCTION FOR CULVERT REPAIRS AND DRAINAGE IMPROVEMENTS AT THE WAIMALU OFF-RAMP ON OAHU.			
		DESIGN		100	
		CONSTRUCTION			6,900
		TOTAL FUNDING	TRN	100 E	6,900 E
93.	S342	INTERSTATE ROUTE H-1, KUNIA INTERCHANGE IMPROVEMENTS, OAHU			
		PLANS FOR IMPROVEMENTS TO THE KUNIA INTERCHANGE AND APPROACHES.			
		PLANS		780	
		TOTAL FUNDING	TRN	780 E	E
94.	S343	INTERSTATE ROUTE H-1 CORRIDOR IMPROVEMENTS, OAHU			
		PLANS TO DETERMINE PROJECTS THAT WILL MEET CURRENT AND FUTURE CAPACITY REQUIREMENTS OF THE H-1 CORRIDOR.			
		PLANS		520	
		TOTAL FUNDING	TRN	520 E	E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
95.	T110	HAWAII BELT ROAD ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE, AND KAAWALII, HAWAII			
		CONSTRUCTION FOR SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH, LAUPAHOEHOE GULCH, AND KAAWALII GULCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			4,000
		TOTAL FUNDING	TRN	E	800 E
			TRN	N	3,200 N
96.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII			
		PLANS AND DESIGN FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,250	
		DESIGN			7,000
		TOTAL FUNDING	TRN	E	1,400 E
			TRN	N	5,600 N
			TRN	1,250 X	X
97.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII			
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		900	
		TOTAL FUNDING	TRN	900 E	E
98.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKAO GULCH, HAWAII			
		LAND ACQUISITION FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKAO GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.			
		LAND		520	
		TOTAL FUNDING	TRN	520 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
99.	T126	KUAKINI HIGHWAY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII			
		DESIGN AND CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.			
		DESIGN		50	
		CONSTRUCTION		2,200	
		TOTAL FUNDING	TRN	2,250 E	E
100.	T127	KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO VICINITY OF SHOWER DRIVE, HAWAII			
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		860	
		CONSTRUCTION		13,000	
		TOTAL FUNDING	TRN	2,600 E	E
			TRN	10,400 N	N
			TRN	860 X	X
101.	T128	KEAAU PAHOA ROAD IMPROVEMENTS, KEAAU TO PAHOA, HAWAII			
		DESIGN FOR WIDENING THE TWO LANE HIGHWAY TO FOUR LANES OR ALTERNATIVE ALIGNMENTS IN THIS CORRIDOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			3,300
		TOTAL FUNDING	TRN	E	660 E
			TRN	N	2,640 N
102.	T135	MAMALAHOA HIGHWAY DRAINAGE IMPROVEMENTS AT KAWA, HAWAII			
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF DRAINAGE BOX CULVERTS AND RAISING OF THE ROADWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,500
		TOTAL FUNDING	TRN	E	300 E
			TRN	N	1,200 N
103.	T142	STREET LIGHT INSTALLATIONS AT VARIOUS LOCATIONS, HAWAII			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF STREET LIGHTS AT VARIOUS LOCATIONS ON HAWAII.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		30	
		CONSTRUCTION		75	
		TOTAL FUNDING	TRN	105 E	E
104.	T144	HAWAII BELT ROAD, REPLACEMENT OF PAHOEHOE STREAM BRIDGE, HAWAII			
		DESIGN FOR THE REPLACEMENT OF A CONCRETE ARCH-DECK BRIDGE ON HAWAII BELT ROAD (ROUTE 19) ON THE BIG ISLAND IN THE VICINITY OF PAPAIKOU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			745
		TOTAL FUNDING	TRN	E	149 E
			TRN	N	596 N
105.	T145	ROCKFALL PROTECTION / SLOPE STABILIZATION AT VARIOUS LOCATIONS, HAWAII			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ROCKFALL/ SLOPE PROTECTION, AND SLOPE AND/OR ROADWAY STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		150	
		DESIGN		2,000	
		CONSTRUCTION		26,000	
		TOTAL FUNDING	TRN	5,630 E	E
			TRN	22,520 N	N
106.		KUPULAU ROAD EXTENSION, HAWAII			
		CONSTRUCTION FOR AN EXTENSION OF KUPULAU ROAD TO REDUCE TRAFFIC CONGESTION ON KOMOHANA STREET.			
		CONSTRUCTION		2,750	
		TOTAL FUNDING	TRN	2,750 E	E
107.	T141	QUEEN KAAHUMANU HIGHWAY IMPROVEMENTS, KEAHOE AIRPORT TO KAWAIHAE HARBOR, HAWAII			
		PLANS FOR IMPROVEMENTS TO QUEEN KAAHUMANU HIGHWAY.			
		PLANS		780	
		TOTAL FUNDING	TRN	780 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2009-2010 F	YEAR O 2010-2011 F
108.	T143	MAMALAHOA HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF PUUWAAWAA RANCH ROAD, HAWAII			
		LAND ACQUISITION AND DESIGN FOR THE CONSTRUCTION OF DRAINAGE IMPROVEMENTS FOR MAMALAHOA HIGHWAY IN THE VICINITY OF PUUWAAWAA RANCH ROAD THAT INCLUDES: RETAINING WALLS, ROAD REALIGNMENT, AND/OR WIDENING, DRAINAGE STRUCTURES, RELOCATING UTILITIES, LAND ACQUISITION, AND OTHER IMPROVEMENTS.			
		LAND		200	
		DESIGN		400	
		TOTAL FUNDING	TRN	600E	E
109.	TP0601	ANE KEOHOKALO LE HIGHWAY, VICINITY OF KEALAKEHE PARKWAY TO VICINITY OF PALANI ROAD, HAWAII			
		CONSTRUCTION FOR ANE KEOHOKALO LE HIGHWAY THAT INCLUDES NEW ROADWAYS, RELOCATION AND/OR CONSTRUCTION OF UTILITIES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		15,000	
		TOTAL FUNDING	TRN	15,000E	E
TRN531 - MAUI HIGHWAYS					
110.	V051	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI.			
		DESIGN AND CONSTRUCTION FOR A NEW ALIGNMENT OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF LAUNIUPOKO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		115	
		CONSTRUCTION		13,100	
		TOTAL FUNDING	TRN	2,500E	E
			TRN	10,000N	N
			TRN	715R	R
111.	V053	HONOAPIILANI HIGHWAY, HIGHWAY SHORELINE PROTECTION AT LAUNIUPOKO, MAUI			
		DESIGN AND CONSTRUCTION FOR THE REVETMENT AT LAUNIUPOKO TO PROTECT THE HONOAPIILANI HIGHWAY FROM SHORELINE EROSION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		CONSTRUCTION		4,500	
		TOTAL FUNDING	TRN	1,100E	E
			TRN	4,400N	N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
112.	V063	KAHULUI AIRPORT ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,000 E	E
			TRN	4,000 N	N
113.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		DESIGN			100
		CONSTRUCTION		900	900
		TOTAL FUNDING	TRN	900 E	1,000 E
114.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI			
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER FACILITIES ON ROUTE 360 HANA HIGHWAY.			
		CONSTRUCTION		1,430	1,500
		TOTAL FUNDING	TRN	E	1,500 E
			TRN	1,430 X	X
115.	V089	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI			
		DESIGN AND CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.			
		DESIGN		10	
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	10 E	2,000 E

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
116.	V092	HONOAPIILANI HIGHWAY SHORELINE IMPROVEMENTS, VICINITY OF OLOWALU, MAUI			
		DESIGN AND CONSTRUCTION FOR SHORELINE IMPROVEMENTS TO INCLUDE SHORELINE EROSION MITIGATION AND ROADWAY WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		150	
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	150 E	400 E
			TRN	N	1,600 N
117.	V095	HALEAKALA HIGHWAY WIDENING AT MILEPOST 0.8, MAUI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING THE HIGHWAY FROM ONE LANE TO TWO LANES, EXTENDING A BOX CULVERT, AND CONSTRUCTING HEADWALLS AND WING WALLS.			
		LAND		55	
		DESIGN		10	
		CONSTRUCTION			1,840
		TOTAL FUNDING	TRN	65 E	1,840 E
118.	V097	PUUNENE AVENUE WIDENING, WAKEA AVENUE TO KUIHELANI HIGHWAY, MAUI			
		CONSTRUCTION FOR THE WIDENING OF PUUNENE AVENUE FROM WAKEA AVENUE TO KUIHELANI HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			4,000
		TOTAL FUNDING	TRN	E	800 E
			TRN	N	3,200 N
119.	VP0301	HONOAPIILANI HIGHWAY WIDENING, LAHAINA TO MAALAEA, MAUI			
		PLANS FOR THE REALIGNMENT/ WIDENING OF HONOAPIILANI HIGHWAY FROM MAALAEA TO LAUNIUPOKO.			
		PLANS		1,000	
		TOTAL FUNDING	TRN	1,000 E	E
120.	V098	KAHEKILI HIGHWAY DRAINAGE IMPROVEMENTS AT WAIHEE TOWN, MAUI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF A DRAINAGE FACILITY ON KAHEKILI HIGHWAY NEAR WAIHEE TOWN.			
		LAND		20	
		DESIGN		50	
		CONSTRUCTION			600
		TOTAL FUNDING	TRN	70 E	600 E



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)			
				FISCAL YEAR	FISCAL YEAR	M O	M O
				2009-2010	2010-2011	F	F

## TRN541 - MOLOKAI HIGHWAYS

121. W011 KAMEHAMEHA V HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, MOLOKAI

CONSTRUCTION FOR REPLACEMENT OF KAWELA STREAM BRIDGE TO INCLUDE SIDEWALKS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		10,000	
TOTAL FUNDING	TRN	2,000 E	E
	TRN	8,000 N	N

122. W013 KAMEHAMEHA V HIGHWAY, MAKAKUPAIA STREAM BRIDGE REPLACEMENT, MOLOKAI

CONSTRUCTION FOR THE REPLACEMENT OF MAKAKUPAIA BRIDGE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			3,750
TOTAL FUNDING	TRN	E	750 E
	TRN	N	3,000 N

123. W017 KAMEHAMEHA V HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MOHALA STREET TO VICINITY OF OKI PLACE, MOLOKAI

DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF GRATED DROP INLETS, AND STORM WATER DRAIN LINES.

DESIGN		150	
CONSTRUCTION			1,250
TOTAL FUNDING	TRN	150 E	1,250 E

## TRN561 - KAUAI HIGHWAYS

124. X006 KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI

CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO WEST OF MALUHIA ROAD, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		36,500	
TOTAL FUNDING	TRN	7,300 E	E
	TRN	29,200 N	N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
125.	X051	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI			
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	
		CONSTRUCTION		900	
		TOTAL FUNDING	TRN	200E	E
			TRN	800N	N
126.	X100	KUHIO HIGHWAY, RETAINING WALLS AND/OR ROADWAY REMEDIATION AT LUMAHAI AND WAINIHA, KAUAI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR RETAINING WALLS AND/OR ROADWAY REMEDIATION FOR THE PRESERVATION OF KUHIO HIGHWAY IN THE VICINITY OF LUMAHAI AND WAINIHA.			
		LAND		225	
		DESIGN		1,190	
		CONSTRUCTION			5,000
		TOTAL FUNDING	TRN	725E	5,000E
			TRN	690X	X
127.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		DESIGN		200	200
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	TRN	1,200E	1,200E
128.	X122	KUHIO HIGHWAY, ROUTE 560, SLOPE PROTECTION, HANAIEI HILL, KAUAI			
		CONSTRUCTION FOR SLOPE STABILIZATION IMPROVEMENTS AND PROTECTION MEASURES.			
		CONSTRUCTION		7,000	
		TOTAL FUNDING	TRN	7,000E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
129.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI			
		DESIGN FOR PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14.			
		DESIGN		600	
		TOTAL FUNDING	TRN	600E	E
130.	X125	KAUMUALII HIGHWAY, OMAO BRIDGE REHABILITATION, KAUAI			
		DESIGN AND CONSTRUCTION FOR REHABILITATION OF A CONCRETE TEE GIRDER BRIDGE ON KAUMUALII HIGHWAY IN THE VICINITY OF OMAO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		550	
		CONSTRUCTION			7,500
		TOTAL FUNDING	TRN	110E	1,500E
			TRN	440N	6,000N
131.		KUHIO HIGHWAY, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR KUHIO HIGHWAY SIGNALIZATION AT THE INTERSECTION OF KAUAI COMMUNITY CORRECTIONAL CENTER AND WAILUA GOLF COURSE.			
		PLANS		250	
		DESIGN		250	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	3,500E	E
132.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI			
		PLANS AND CONSTRUCTION FOR A NEW KAPAA BYPASS AND/OR WIDEN SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		600	
		CONSTRUCTION		24,500	
		TOTAL FUNDING	TRN	2,100E	E
			TRN	6,000N	N
			TRN	17,000V	V

CAPITAL IMPROVEMENT PROJECTS

CAPITAL PROJECT		EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
ITEM NO.	PROJECT NO.		FISCAL YEAR	FISCAL YEAR
			2009-2010	2010-2011
			F	F
TRN595 - HIGHWAYS ADMINISTRATION				
133.	X091	ADA AND PEDESTRIAN IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE		
		DESIGN AND CONSTRUCTION TO PROVIDE FOR AND IMPROVE EXISTING ADA AND PEDESTRIAN FACILITIES ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		DESIGN		500
		CONSTRUCTION	1,300	800
		TOTAL FUNDING	1,300 E	900 E
		TRN	N	400 N
134.	X096	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE		
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS OR PROJECTS WITH NECESSARY MITIGATIVE RESPONSES. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.		
		LAND	300	300
		TOTAL FUNDING	300 E	300 E
135.	X097	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE		
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.		
		DESIGN	200	
		CONSTRUCTION	1,000	
		TOTAL FUNDING	1,200 E	E
136.	X098	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE		
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		DESIGN	250	250
		CONSTRUCTION	2,000	2,000
		TOTAL FUNDING	450 E	450 E
		TRN	1,800 N	1,800 N

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
137.	X099	HIGHWAY PLANNING, STATEWIDE		
		PLANS FOR FEDERAL AID AND NON-FEDERAL AID PROGRAMS AND PROJECTS THAT INCLUDE ROADWAY CLASSIFICATION, DATA COLLECTION, LONG- AND MID-RANGE PLANNING, TRANSPORTATION NEEDS STUDIES, RESEARCH, HRS 343/NEPA STUDIES, CORRIDOR STUDIES, AND SCOPING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		PLANS	6,500	6,500
		TOTAL FUNDING TRN	1,300E	1,300E
		TRN	5,200N	5,200N
138.	X200	TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE		
		PLANS, DESIGN, AND CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS AND TELEMTRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		PLANS	75	
		DESIGN	300	
		CONSTRUCTION		3,500
		TOTAL FUNDING TRN	75E	700E
		TRN	300N	2,800N
139.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE		
		CONSTRUCTION FOR SEISMIC RETROFIT IMPROVEMENTS FOR VARIOUS BRIDGES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		CONSTRUCTION	3,000	3,000
		TOTAL FUNDING TRN	600E	600E
		TRN	2,400N	2,400N

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
140.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENTS PROGRAM PROJECTS STAFF COSTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES & FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CIP PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON- PERMANENT CIP PROJECTS RELATED POSITIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING &/OR REIMBURSEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		18,497	18,497
		TOTAL FUNDING	TRN	12,500 B	12,500 B
			TRN	6,000 N	6,000 N
141.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE			
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		200	200
		TOTAL FUNDING	TRN	199 E	199 E
			TRN	1 N	1 N
142.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		500	
		DESIGN		3,250	
		CONSTRUCTION		6,250	2,000
		TOTAL FUNDING	TRN	2,000 E	400 E
			TRN	8,000 N	1,600 N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
143.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE			
		CONSTRUCTION TO PROVIDE FOR AND IMPROVE EXISTING BICYCLE FACILITIES ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	400E	E
			TRN	1,600N	N
144.	X238	HEIGHT MODERNIZATION FACILITIES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEIGHT MODERNIZATION FACILITIES ON VARIOUS ISLANDS. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		3,397	
		EQUIPMENT			2,297
		TOTAL FUNDING	TRN	3,399E	2,299E
			TRN	1N	1N
145.	X239	SIGN AND TRAFFIC SIGNAL MANAGEMENT, STATEWIDE			
		PLANS FOR THE DEVELOPMENT OF A STATEWIDE SIGN AND TRAFFIC SIGNAL MANAGEMENT PROGRAM.			
		PLANS		250	
		TOTAL FUNDING	TRN	250B	B

## D. ENVIRONMENTAL PROTECTION

## HTH840 - ENVIRONMENTAL MANAGEMENT

1.	840101	WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE			
		CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE WATER POLLUTION CONTROL REVOLVING FUND PURSUANT TO CHAPTER 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,269	6,269
		TOTAL FUNDING	HTH	1,045C	1,045C
			HTH	5,224N	5,224N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
2.	840102	SAFE DRINKING WATER REVOLVING FUND, STATEWIDE			
		CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR DRINKING WATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE DRINKING WATER TREATMENT REVOLVING LOAN FUND PURSUANT TO CHAPTER 340E, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		9,776	9,776
		TOTAL FUNDING	HTH	1,630 C	1,630 C
			HTH	8.146N	8.146N

## LNR401 - AQUATIC RESOURCES

## 3. LAKE WILSON, FENCE AND ENCLOSURE, OAHU

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CHAIN LINK FENCE TO ENCLOSE CERTAIN AREAS OF LAND SURROUNDING LAKE WILSON.

DESIGN	10	
CONSTRUCTION	490	
TOTAL FUNDING	LNR	500 C

C

## LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT

## 4. G01CS00A CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.

PLANS	2,688	2,688
TOTAL FUNDING	LNR	2,688 C

## 5. HAKIOAWA SHELTER AND KITCHEN, KAHOO LAWE

DESIGN AND CONSTRUCTION OF A NEW HALE AND ALTERNATIVE/SUSTAINABLE ENERGY INFRASTRUCTURE TO PROVIDE SHELTER FOR THE KAHO'OLAWA OHANA AND VOLUNTEERS.

DESIGN	15	
CONSTRUCTION	385	
TOTAL FUNDING	LNR	400 C

C



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

## E. HEALTH

## HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM

1. CENTRAL OAHU AMBULANCE FACILITY, OAHU  
 PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN AMBULANCE FACILITY FOR CENTRAL OAHU.  

PLANS	70	
DESIGN	560	
CONSTRUCTION	3,025	
EQUIPMENT	195	
TOTAL FUNDING	3,850	C

## HTH595 - HEALTH RESOURCES ADMINISTRATION

2. HANA HEALTH, MAUI  
 PLANS FOR MEDICAL CENTER EXPANSION, SCHEMATIC DESIGN, AND CONSTRUCTION DOCUMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  

PLANS	450	
TOTAL FUNDING	450	C
3. HOSPICE OF HILO, HAWAII  
 CONSTRUCTION FOR PHASE I OF A MEDICARE CERTIFIED IN-PATIENT HOSPICE FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  

CONSTRUCTION	750	
TOTAL FUNDING	750	C
4. MOLOKA'I OHANA HEALTH CARE, MOLOKA'I  
 PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE, RETROFIT AND PROVIDE OTHER IMPROVEMENTS FOR AN EXPANDED FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  

PLANS	1	
DESIGN	1	
CONSTRUCTION	997	
EQUIPMENT	1	
TOTAL FUNDING	1,000	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)			
				FISCAL M	FISCAL M		
				YEAR O	YEAR O		
				2009-2010 F	2010-2011 F		

## HTH210 - HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE

5. 295110 HAWAII HEALTH SYSTEMS CORPORATION, REPAIR AND MAINTENANCE, STATEWIDE
- DESIGN, CONSTRUCTION, AND EQUIPMENT TO IMPLEMENT REPAIR AND MAINTENANCE PROJECTS FOR THE HAWAII HEALTH SYSTEMS CORPORATION.
- |               |          |     |   |
|---------------|----------|-----|---|
| DESIGN        | 998      |     |   |
| CONSTRUCTION  | 19,222   |     |   |
| EQUIPMENT     | 2        |     |   |
| TOTAL FUNDING | 20,222 C | HTH | C |
6. MAUI MEMORIAL MEDICAL CENTER, NEW DIALYSIS UNIT, MAUI
- PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW DIALYSIS UNIT.
- |               |         |     |   |
|---------------|---------|-----|---|
| PLANS         | 1       |     |   |
| DESIGN        | 1       |     |   |
| CONSTRUCTION  | 6,630   |     |   |
| EQUIPMENT     | 568     |     |   |
| TOTAL FUNDING | 7,200 C | HTH | C |
7. MAUI MEMORIAL MEDICAL CENTER, MOLOKAI NORTH/OB/ OR/SNF/MOLOKINI/PHASE II IMPROVEMENTS AND EXPANSION, MAUI
- DESIGN AND CONSTRUCTION TO RENOVATE, RELOCATE AND EXPAND MAUI MEMORIAL MEDICAL CENTER FACILITIES FOR VARIOUS DEPARTMENTS.
- |               |          |     |     |
|---------------|----------|-----|-----|
| DESIGN        | 15,000   |     |     |
| CONSTRUCTION  |          |     | 1   |
| TOTAL FUNDING | 15,000 C | HTH | 1 C |
8. NEW LONG TERM CARE (LTC GREEN HOUSE) FACILITY, MAUI
- PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT OF A NEW LONG TERM CARE FACILITY FOR THE MAUI REGION. FACILITY TO CONSIST OF 30 BEDS AND BE LOCATED AT KULA HOSPITAL.
- |               |         |     |   |
|---------------|---------|-----|---|
| PLANS         | 100     |     |   |
| DESIGN        | 500     |     |   |
| CONSTRUCTION  | 4,399   |     |   |
| EQUIPMENT     | 1       |     |   |
| TOTAL FUNDING | 5,000 C | HTH | C |

## HTH430 - ADULT MENTAL HEALTH - INPATIENT

9. 430103 HAWAII STATE HOSPITAL, REPAIRS AND IMPROVEMENTS TO VARIOUS BUILDINGS AND SITES, OAHU
- DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS, WHICH MAY INCLUDE RE-ROOFING, STRUCTURAL WORK, AND VARIOUS OTHER IMPROVEMENTS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		258	
		CONSTRUCTION		1,813	
		TOTAL FUNDING	AGS	2,071 C	C

## HTH907 - GENERAL ADMINISTRATION

10. 907101 VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE

DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES STATEWIDE. IMPROVEMENTS MAY INCLUDE RE-ROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND VARIOUS OTHER IMPROVEMENTS.

DESIGN	71	
CONSTRUCTION	3,200	
TOTAL FUNDING	3,271 C	C

11. 907106 ENERGY EFFICIENCY IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO MECHANICAL SYSTEMS AT DEPARTMENT OF HEALTH FACILITIES TO PROVIDE FOR ENERGY SAVINGS.

DESIGN	331	
CONSTRUCTION	2,757	
TOTAL FUNDING	3,088 C	C

## F. SOCIAL SERVICES

## HMS501 - IN-COMMUNITY YOUTH PROGRAMS

1. HALE 'OPIO KAUAI, INC., KAUAI

DESIGN AND CONSTRUCTION TO REPAIR THE THERAPEUTIC BEHAVIORAL HEALTH GROUP HOME FOR FOSTER GIRLS, LAWAI, KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN	1	
CONSTRUCTION	79	
TOTAL FUNDING	80 C	C

## HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)

2. HAWAII YOUTH CORRECTIONAL FACILITY'S (HYCF) SECURE CUSTODY FACILITY (SCF) AIR CONDITIONING REPLACEMENT, OAHU

PLANS, DESIGN, AND CONSTRUCTION TO REPLACE AIR CONDITIONING UNIT AND SMOKE EVACUATION UNITS, AND PERFORM ROOF REPAIRS FOR THE HEALTH AND SAFETY OF THE YOUTHS.

PLANS	170
DESIGN	217

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
		CONSTRUCTION		1,700	
		TOTAL FUNDING	HMS	2,087 C	C

DEF112 - SERVICES TO VETERANS

3.	P70036	COLUMBARIA NICHES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR ADDITIONAL COLUMBARIA NICHES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		194	
		CONSTRUCTION			961
		TOTAL FUNDING	AGS	194 C	961 C
4.		LUMP SUM CIP- VETERANS CEMETERY IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO VETERANS CEMETERIES STATEWIDE.			
		DESIGN		265	
		CONSTRUCTION			1,913
		TOTAL FUNDING	AGS	265 C	1,913 C

HMS601 - ADULT AND COMMUNITY CARE SERVICES

5.		LA'A KEA FOUNDATION, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE SUNRISE FARM COMMUNITY OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		398	
		CONSTRUCTION		1	
		TOTAL FUNDING	HMS	400 C	C

HMS220 - RENTAL HOUSING SERVICES

6.		LUMP SUM CIP - NON ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, RENOVATIONS, AND ADA COMPLIANCE, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR NON ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, AND RENOVATIONS, STATEWIDE. PROJECTS TO ALSO INCLUDE THOSE NEEDED FOR ADA COMPLIANCE.			
		DESIGN		500	500
		CONSTRUCTION		7,413	4,000
		TOTAL FUNDING	HMS	7,913 C	4,500 C

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS					
7.	TBA001	NAHASDA DEVELOPMENT PROJECTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR VARIOUS HAWAIIAN HOMESTEAD PROJECTS AND IMPROVEMENTS STATEWIDE, PURSUANT TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT, PUBLIC LAW 107-73, 107TH CONGRESS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		14,998	14,998
		TOTAL FUNDING	HHL	15,000N	15,000N
8.	TBA002	WATER SOURCE DEVELOPMENT FOR STATE HOUSING PROJECTS IN THE VILLAGES OF LEIALII, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EXPLORATORY WELL AND A PRODUCTION WELL TO SERVE AS A POTABLE WATER SOURCE FOR STATE HOUSING PROJECTS IN THE VILLAGES OF LEIALII.			
		DESIGN		300	
		CONSTRUCTION		2,000	
		EQUIPMENT		200	
		TOTAL FUNDING	HHL	2,500C	C
9.	TBA003	WATER SYSTEM IMPROVEMENTS, LALAMILO, WAIMEA, HAWAII			
		CONSTRUCTION FOR A WATER RESERVOIR AND TRANSMISSION LINE TO PROVIDE RELIABLE POTABLE WATER TO THE EXISTING COMMUNITY AS WELL AS PLANNED STATE PROJECTS IN WAIMEA.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING	HHL	6,000C	C
10.		KIPUKA INPEACE PROJECT, OAHU			
		DESIGN AND CONSTRUCTION OF THE INSTITUTE FOR NATIVE PACIFIC EDUCATION AND CULTURE EARLY CHILDHOOD AND WORKFORCE DEVELOPMENT FACILITIES CO-LOCATED ON THE LARGER KIPUKA COMMUNITY COLLABORATION PROJECT GROUNDS. THE PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,499	
		TOTAL FUNDING	HHL	1,500C	C

## HTH904 - EXECUTIVE OFFICE ON AGING

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
11.		POHAI NANI FOUNDATION, OAHU			
		DESIGN AND CONSTRUCTION FOR THE WELLNESS CENTER CAPITAL PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		500	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	HTH	1,500 C	C

G. FORMAL EDUCATION

EDN100 - SCHOOL-BASED BUDGETING

1.	20	LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.			
		DESIGN		14,000	
		CONSTRUCTION		126,500	
		TOTAL FUNDING	EDN	140,500 B	
2.		LUMP SUM CIP - CLASSROOM RENOVATIONS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR CLASSROOM RENOVATIONS, ADDITIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOLS SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		29,999	
		TOTAL FUNDING	EDN	30,000 B	
3.	10	LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.			
		PLANS		1	
		LAND		1	
		DESIGN		600	
		CONSTRUCTION		1,397	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	2,000 B	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
4.		LUMP SUM CIP - RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES (INCLUDING RESTROOMS) AND RELATED SITE IMPROVEMENTS, EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		970	
		CONSTRUCTION		8,730	
		EQUIPMENT		300	
		TOTAL FUNDING EDN		10,000 B	B
5.		LUMP SUM CIP - ARCHITECTURAL BARRIER REMOVAL, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		1,850	
		TOTAL FUNDING EDN		2,000 B	B
6.		LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLAN, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		220	
		CONSTRUCTION		1,780	
		TOTAL FUNDING EDN		2,000 B	B
7.	008008	LUMP SUM CIP - ASBESTOS/LEAD REMOVAL, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT, AND RENOVATION OF ALL EXISTING SCHOOL BUILDINGS. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		900	
		TOTAL FUNDING EDN		1,000 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
8.	000007	LUMP SUM CIP - SPECIAL EDUCATION RENOVATIONS, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		825	
		EQUIPMENT		25	
		TOTAL FUNDING	EDN	1,000 B	B
9.	19	LUMP SUM CIP - GENDER EQUITY, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		400	
		CONSTRUCTION		1,500	
		EQUIPMENT		100	
		TOTAL FUNDING	EDN	2,000 B	B
10.		LUMP SUM CIP - FIRE PROTECTION, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE SAFETY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	500 B	B
11.	009009	LUMP SUM CIP - HEALTH AND SAFETY, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS, AND ORDINANCES AND/OR COUNTY REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	500 B	B
12.		AHUIMANU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		74	
		TOTAL FUNDING	EDN	75 B	B



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
13.		AIEA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY CONNECTING BUILDING C WITH THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		20	
		CONSTRUCTION		80	
		TOTAL FUNDING	EDN	100B	B
14.		AINA HAINA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A PUBLIC ADDRESS SYSTEM IN THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			49
		TOTAL FUNDING	EDN	B	50B
15.		ALIAMANU MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF THREE SPLIT AIR CONDITIONING UNITS IN ROOMS S-1; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		3	
		CONSTRUCTION		25	
		EQUIPMENT		7	
		TOTAL FUNDING	EDN	35B	B
16.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR SITE DEVELOPMENT OF A PARKING AND ACCESS ROAD ENTERING FROM MAHOE STREET TO CIRCLE AROUND THE SCHOOL GROUNDS AND EXIT ONTO WAIPAHU AVENUE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			10
		DESIGN			55
		CONSTRUCTION			900
		TOTAL FUNDING	EDN	B	965B
17.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF A DRAINAGE SYSTEM FOR THE CAFETERIA TO PREVENT FLOODING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			378
		TOTAL FUNDING	EDN	B	380B

CAPITAL IMPROVEMENT PROJECTS					
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
18.		BARBERS POINT ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			100
		DESIGN			100
		CONSTRUCTION			800
		TOTAL FUNDING	EDN	B	1,000B
19.		BARBERS POINT ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR TRAFFIC RESISTING POSTS ALONG THE PLAYGROUND FENCE ON THE MAIN ROAD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			24
		TOTAL FUNDING	EDN	B	26B
20.		BENJAMIN PARKER SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A RETAINING WALL BEHIND THE CAFETERIA AND BUILDINGS C AND D; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		100	
		TOTAL FUNDING	EDN	125B	B
21.		CAMPBELL HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		45	
		CONSTRUCTION		455	
		TOTAL FUNDING	EDN	500B	B
22.		CASTLE HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF AN ALL WEATHER TRACK, SYNTHETIC ATHLETIC FIELD, AND PRESSBOX/ ANNOUNCER'S BOOTH; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		4,850	
		TOTAL FUNDING	EDN	5,000B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
23.		CENTRAL MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO ENCLOSE THE PEDESTRIAN OVERPASS THAT CONNECTS THE MAUKA AND MAKAI CAMPUSES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		45	
		CONSTRUCTION		150	
		TOTAL FUNDING EDN		195 B	B
24.		DOLE MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR RESTROOM RENOVATIONS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		225	
		TOTAL FUNDING EDN		250 B	B
25.		ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A WINDBREAKER SYSTEM FOR THE COVERED WALKWAY BETWEEN BUILDINGS E AND G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		3	
		CONSTRUCTION		27	
		TOTAL FUNDING EDN		30 B	B
26.		EWA BEACH ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			60
		CONSTRUCTION			575
		TOTAL FUNDING EDN		B	635 B
27.		EWA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING FOR BUILDINGS C AND D; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		600	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		681 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2009-2010 F	YEAR O 2010-2011 F
28.		EWA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		748	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	750 B	B
29.		FERN ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ROOF IMPROVEMENTS AND CARPET REPLACEMENT. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		75	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	575 B	B
30.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE CHORUS CLASSROOM, INCLUDING ASBESTOS REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	480 B	B
31.		HILO HIGH SCHOOL, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW GYMNASIUM/ EMERGENCY SHELTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		997	7,997
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	1,000 B	8,000 B
32.		HOKULANI ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR CAMPUS-WIDE AMERICANS WITH DISABILITIES ACT TRANSITION ACCESSIBILITY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		20	
		DESIGN		55	
		CONSTRUCTION		300	
		TOTAL FUNDING	EDN	375 B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
33.		HOLUALOA ELEMENTARY SCHOOL, HAWAII			
		DESIGN OF A PEDESTRIAN BUFFER ALONG A COUNTY EASEMENT ACCESS ROAD THROUGH CAMPUS TO ENSURE THE SAFETY OF STUDENTS AND STAFF WHILE CROSSING FROM ONE SIDE OF CAMPUS TO THE OTHER ACROSS TRAFFIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			280
		TOTAL FUNDING	EDN	B	280 B
34.		HONOWAI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF WALLS FOR CLASSROOMS, TO ALSO INCLUDE INSTALLATION OF SOLAR EXHAUST VENTILATORS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		250	
		TOTAL FUNDING	EDN	260 B	B
35.		ILIMA INTERMEDIATE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			700
		EQUIPMENT			25
		TOTAL FUNDING	EDN	B	775 B
36.		JEFFERSON ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO RE-ROOF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			250
		TOTAL FUNDING	EDN	B	250 B
37.		KAELEPULU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A REPLACEMENT WALKWAY FROM THE PARKING LOT TO BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		150	
		TOTAL FUNDING	EDN	175 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
38.		KAHALU'U ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING A PARKING LOT, BUILDING RETROFITS FOR SOLAR PANELING, AND UPGRADES TO ELECTRICAL SYSTEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		480	
		TOTAL FUNDING EDN		530 B	B
39.		KAHUKU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		40	
		CONSTRUCTION		425	
		TOTAL FUNDING EDN		465 B	B
40.		KAILUA HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NATURAL SCIENCE CLASSROOM AND RESEARCH LAB; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	1
		CONSTRUCTION		699	7,198
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		800 B	7,200 B
41.		KAIULANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADE OF THE ENTIRE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		46	
		CONSTRUCTION		419	
		TOTAL FUNDING EDN		465 B	B
42.		KALANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF SECURITY SCREENS AND STAIRWELL GATES FOR SECOND FLOOR PROJECT FOR BUILDINGS A-E, PROJECT INCLUDES TOTAL OF TEN STAIRWELLS TO DETER VANDALISM, THEFT, AND TRESPASSING ON THE SECOND LEVEL OF SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION			450
		TOTAL FUNDING EDN		50 B	450 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
43.		KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A COVERED WALKWAY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			90
		TOTAL FUNDING	EDN	B	100 B
44.		KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A SECOND RAMP FOR CAMPUS EVACUATION, INCLUDING GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		45	
		CONSTRUCTION		405	
		TOTAL FUNDING	EDN	450 B	B
45.		KALIHI-WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADE. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		800	
		EQUIPMENT		70	
		TOTAL FUNDING	EDN	1,020 B	B
46.		KAPOLEI II ELEMENTARY SCHOOL, OAHU			
		DESIGN FOR A NEW ELEMENTARY SCHOOL IN KAPOLEI. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		3,520	
		TOTAL FUNDING	EDN	3,520 B	B
47.		KA'U HIGH AND PAHALA ELEMENTARY SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A GYMNASIUM/CIVIL DEFENSE SHELTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		800	
		CONSTRUCTION		1,000	16,200
		EQUIPMENT			100
		TOTAL FUNDING	EDN	1,800 B	16,300 B
48.		KAWANANAKOA MIDDLE SCHOOL, OAHU			
		DESIGN FOR THE RENOVATION OF THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			900
		TOTAL FUNDING	EDN	B	900 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
49.		KEAUKAHA ELEMENTARY SCHOOL, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		80	
		DESIGN		520	
		CONSTRUCTION		7,200	
		EQUIPMENT		200	
		TOTAL FUNDING EDN		8,000B	B
50.		KEONEPOKO ELEMENTARY SCHOOL, HAWAII			
		DESIGN AND CONSTRUCTION OF A COVERED WALKWAY TO PORTABLES P10 AND P11; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		199	
		TOTAL FUNDING EDN		200B	B
51.		KING INTERMEDIATE SCHOOL, OAHU			
		PLANS AND DESIGN FOR EXPANSION OF THE CAFETERIA TO SERVE AS AN AUDITORIUM. PROJECTS TO INCLUDE ADDITION OF A STAGE WITHIN THE EXISTING FACILITY, NEW RESTROOMS, AND A PARKING LOT ACROSS THE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			25
		DESIGN			25
		TOTAL FUNDING EDN		B	50B
52.		KING KAMEHAMEHA III ELEMENTARY SCHOOL, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR ADA TRANSITION ACCESSIBILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		355	
		TOTAL FUNDING EDN		375B	B
53.		KING KEKAULIKE HIGH SCHOOL, MAUI			
		DESIGN FOR A NEW AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		600	
		TOTAL FUNDING EDN		600B	B



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
54.		KIPAPA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A PARKING LOT WITH A DROP OFF AREA FOR STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		480	
		TOTAL FUNDING	EDN	500 B	B
55.		LAIE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR AMERICANS WITH DISABILITIES ACT TRANSITION ACCESSIBILITY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		325	
		TOTAL FUNDING	EDN	375 B	B
56.		LANAKILA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF LANAKILA ELEMENTARY BUILDING I AND C SECURITY SCREENS, REPLACEMENT OF CAMPUS PROGRAM BELL, AND PARKING LOT RESURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			11
		CONSTRUCTION			259
		TOTAL FUNDING	EDN	B	270 B
57.		LEHUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING IN THE SCHOOL LIBRARY AND OTHER IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		40	
		CONSTRUCTION		320	
		TOTAL FUNDING	EDN	360 B	B
58.		MA'EMA'E ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR THE INSTALLATION OF A SAFETY FENCE NEAR GRADE 5 ROOMS NEAR THE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			35
		TOTAL FUNDING	EDN	B	35 B

CAPITAL IMPROVEMENT PROJECTS					
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2009-2010 F	YEAR O 2010-2011 F
59.		MAKAWAO ELEMENTARY SCHOOL, MAUI			
		PLANS AND DESIGN FOR EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		200	
		DESIGN		200	
		TOTAL FUNDING	EDN	400 B	B
60.		MANANA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF RETAINING WALLS AND FOR SCHOOL WIDE DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	450 B	B
61.		MANOA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO INSTALL A PLAY COURT COVER FOR THE BLACKTOP AREA ADJACENT TO BUILDING E (CAFETORIUM); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		99	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	500 B	B
62.		MAUKA LANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR AN ADDITIONAL EVACUATION ROUTE RAMP, INCLUDING GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		45	
		CONSTRUCTION		405	
		TOTAL FUNDING	EDN	450 B	B
63.		MCKINLEY HIGH SCHOOL, OAHU			
		DESIGN FOR THE RENOVATION OF BUILDING W; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		700	
		TOTAL FUNDING	EDN	700 B	B
64.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RESURFACE THE SCHOOL PARKING LOT AND DRIVEWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			12

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		CONSTRUCTION			300
		TOTAL FUNDING	EDN	B	312 B
65.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR RESURFACING OF SAND WITH A PLAYGROUND COVER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			75
		TOTAL FUNDING	EDN	B	75 B
66.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO STABILIZE AN UNDEVELOPED ERODING SLOPE NEAR A SCHOOL BUILDING AND PLAYGROUND; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		600	
		TOTAL FUNDING	EDN	600 B	B
67.		MILILANI WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR VENTILATION OF POD CLASSROOMS WITH THE INSTALLATION OF SOLAR FANS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			100
		TOTAL FUNDING	EDN	B	150 B
68.		MILILANI WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR PARKING LOT EXPANSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		99	
		TOTAL FUNDING	EDN	100 B	B
69.		MOANALUA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT TO RESURFACE, REPAINT, AND REPAIR THE EXISTING DUAL-PURPOSE BASKETBALL/ VOLLEYBALL COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			130
		EQUIPMENT			2
		TOTAL FUNDING	EDN	B	132 B
70.		MOANALUA MIDDLE SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM ACROSS THE ENTIRE CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		10	
		CONSTRUCTION		430	
		TOTAL FUNDING	EDN	450 B	B
71.		NANAKULI HIGH AND INTERMEDIATE SCHOOL, OAHU			
		PLANS AND DESIGN FOR A MULTI-MEDIA BUILDING, WHICH INCLUDES A THEATER FOR THE DRAMA CLUB; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			550
		DESIGN			550
		TOTAL FUNDING	EDN	B	1,100 B
72.		PALISADES ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A CAMPUS WIDE ELECTRICAL UPGRADE, INCLUDING GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		600	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	EDN	3,600 B	B
73.		PEARL CITY HIGH SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CAMPUS-WIDE NETWORKING AND COMMUNICATION SYSTEM UPGRADES, INCLUDING PHONES, INTERNET WIRING, MOBILE CARTS FOR MOVING NETWORKING EQUIPMENT, AND PAGING SYSTEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		25	
		EQUIPMENT		125	
		TOTAL FUNDING	EDN	150 B	B
74.		POPE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE PERIMETER FENCE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			100
		TOTAL FUNDING	EDN	B	150 B
75.		PUOHALA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ELECTRICAL UPGRADES TO THE WHOLE CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		98	
		TOTAL FUNDING	EDN	100 B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
76.		RADFORD HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF AN ALL-WEATHER TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			1,300
		TOTAL FUNDING	EDN	B	1,350B
77.		RADFORD HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE THE GYMNASIUM FLOOR; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			5
		CONSTRUCTION			150
		TOTAL FUNDING	EDN	B	155B
78.		RED HILL ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		30	
		CONSTRUCTION		435	
		TOTAL FUNDING	EDN	465B	B
79.		ROYAL ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DRAINAGE SYSTEM ON THE FRONT LAWN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			3
		CONSTRUCTION			90
		EQUIPMENT			3
		TOTAL FUNDING	EDN	B	96B
80.		SALT LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE INTERIOR CLASSROOMS OF BUILDING F-10; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		500	
		EQUIPMENT		300	
		TOTAL FUNDING	EDN	1,000B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
81.		STEVENSON MIDDLE SCHOOL, MULTIPURPOSE RECREATIONAL FACILITY, OAHU			
		CONSTRUCTION FOR A MULTIPURPOSE RECREATIONAL FACILITY INCLUDING CLASSROOMS, GYMNASIUM, LOCKER ROOMS, BAND ROOM AND MEETING SPACE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		4,000	
		TOTAL FUNDING EDN		4,000B	B
82.		WAIAKEA HIGH SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE SCHOOL'S NEW ALL-WEATHER TRACK AND FIELD FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		LAND			1
		DESIGN		100	500
		CONSTRUCTION		199	2,197
		EQUIPMENT			1
		TOTAL FUNDING EDN		300B	2,700B
83.		WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING ON KINO'OLE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			450
		TOTAL FUNDING EDN		B	450B
84.		WAIALUA HIGH AND INTERMEDIATE SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND UPGRADES TO THE SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS LEARNING CENTER AS SUPPORT FOR THE ROBOTICS PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			48
		DESIGN			100
		CONSTRUCTION			600
		EQUIPMENT			2
		TOTAL FUNDING EDN		B	750B
85.		WAIHEE ELEMENTARY SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND STRUCTURAL IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			100
		CONSTRUCTION			500
		TOTAL FUNDING EDN		B	600B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
86.		WAIKELE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE FACULTY PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			99
		TOTAL FUNDING	EDN	B	100B
87.		WAIMEA ELEMENTARY AND MIDDLE SCHOOL, HAWAII			
		DESIGN FOR A NEW DROP OFF AREA TO ALLEVIATE AN UNSAFE TRAFFIC PATTERN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		70	
		TOTAL FUNDING	EDN	70B	B
88.		WAIPAHU ELEMENTARY SCHOOL, OAHU			
		DESIGN FOR AN EIGHT-CLASSROOM BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		TOTAL FUNDING	EDN	100B	B

## EDN400 - SCHOOL SUPPORT

89.		LUMP SUM CIP - PROJECT POSITIONS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		4,800	4,800
		TOTAL FUNDING	EDN	4,800B	4,800B

## EDN407 - PUBLIC LIBRARIES

90.	01-H&S	HEALTH AND SAFETY, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDINGS AND GROUNDS, AND OTHERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		PLANS		200	1
		DESIGN		700	1
		CONSTRUCTION		2,000	997
		EQUIPMENT		100	1
		TOTAL FUNDING	AGS	3,000 C	1,000 C
91.		AIEA PUBLIC LIBRARY, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO RELOCATE AIEA PUBLIC LIBRARY FROM ITS CURRENT LOCATION TO A PARCEL OF LAND ALREADY OWNED BY THE STATE NEAR THE OLD SUGAR MILL PROPERTY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	900
		CONSTRUCTION		997	8,098
		EQUIPMENT		1	1
		TOTAL FUNDING	AGS	1,000 C	9,000 C
92.		MANOA PUBLIC LIBRARY, EXPANSION, OAHU			
		EQUIPMENT FOR THE NEW MANOA PUBLIC LIBRARY FACILITY, INCLUDING FURNITURE, SHELVING, RACKS, DISPLAYS, WHITE BOARDS, AND CARTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		EQUIPMENT		250	
		TOTAL FUNDING	AGS	250 C	C
93.		MCCULLY-MOILIILI PUBLIC LIBRARY, SECURITY GATES AND FENCE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF SECURITY GATES AND FENCE AROUND THE FULL PERIMETER OF THE LIBRARY FACILITY AND PARKING AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		9	
		CONSTRUCTION		100	
		TOTAL FUNDING	AGS	110 C	C
UOH100 - UNIVERSITY OF HAWAII, MANOA					
94.	M96	UHM, FACULTY HOUSING, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACULTY HOUSING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS		999	
		LAND		1	
		DESIGN		4,000	1,000
		CONSTRUCTION			63,000
		EQUIPMENT			1,000
		TOTAL FUNDING	UOH	5,000 E	65,000 E



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
95.	R12	UHM, CENTER FOR MICROBIAL OCEANOGRAPHY RESEARCH AND EDUCATION BUILDING, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE BIOMEDICAL SCIENCES BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, COMMISSIONING, REFURBISHMENT OF EXISTING COURTYARDS, AND ALL PROJECT RELATED COSTS.			
		DESIGN		1,700	
		CONSTRUCTION			20,799
		EQUIPMENT			1
		TOTAL FUNDING	UOH	1,700 E	20,800 E
96.	R13	UHM, CANCER RESEARCH CENTER OF HAWAII, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE CANCER RESEARCH CENTER OF HAWAII. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT AND/OR ACQUISITION OF BUILDING, RENOVATIONS, AND ALL PROJECT RELATED COSTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	
		LAND		1	
		DESIGN		45,000	
		CONSTRUCTION		174,000	
		EQUIPMENT		17,300	
		TOTAL FUNDING	UOH	45,005 B	B
			UOH	180,397 E	E
			UOH	10,900 N	N
97.		UHM, CLARENCE TC CHING COMPLEX, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE CLARENCE TC CHING COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1,000	
		DESIGN		1,000	
		CONSTRUCTION		8,000	
		TOTAL FUNDING	UOH	5,000 C	C
			UOH	5,000 R	R
98.		UHM, WOMEN'S LOCKER ROOM AND NAGATANI ACADEMIC CENTER EXPANSION AND REFURBISHMENT, OAHU			
		DESIGN AND CONSTRUCTION FOR THE EXPANSION AND RENOVATION OF THE MAIN WOMEN'S LOCKER ROOM AND NAGATANI ACADEMIC CENTER.			
		DESIGN		500	
		CONSTRUCTION		4,000	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		TOTAL FUNDING	UOH	4,250 C	C
			UOH	250 R	R
99.		UHM, CAMPUS CENTER RENOVATION AND ADDITION, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND ADDITION TO THE CAMPUS CENTER COMPLEX.			
		PLANS		2	
		DESIGN		2	
		CONSTRUCTION		10,996	
		EQUIPMENT		3,000	
		TOTAL FUNDING	UOH	14,000 C	C
UOH210 - UNIVERSITY OF HAWAII, HILO					
100.		UHH, HAWAIIAN LANGUAGE BUILDING, HAWAII			
		PLANS AND DESIGN FOR THE HAWAIIAN LANGUAGE BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		999	
		DESIGN		1	
		TOTAL FUNDING	UOH	1,000 C	C
101.		UHH, COLLEGE OF PHARMACY, HAWAII			
		PLANS AND DESIGN FOR THE COLLEGE OF PHARMACY BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		1,000	
		DESIGN		4,500	
		TOTAL FUNDING	UOH	5,500 C	C
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES					
102.	M15	MAU, SCIENCE BUILDING, MAUI			
		CONSTRUCTION AND EQUIPMENT FOR A SCIENCE BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION		1	
		EQUIPMENT		3,156	
		TOTAL FUNDING	UOH	3,157 C	C

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
103.	W50	WIN, LIBRARY AND LEARNING RESOURCES CENTER, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR A LIBRARY AND LEARNING RESOURCES CENTER. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, PARKING, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION			1
		EQUIPMENT			1,577
		TOTAL FUNDING	UOH	C	1,578 C
104.		MAU, MOLOKA'I CAMPUS, MOLOKA'I			
		PLANS AND LAND ACQUISITION FOR THE EXPANSION OF THE MOLOKA'I EDUCATION CENTER.			
		PLANS		1	
		LAND		499	
		TOTAL FUNDING	UOH	500 C	C
105.		LEE, WAIANAE EDUCATION CENTER, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE WAIANAE EDUCATION CENTER.			
		PLANS			1
		LAND			500
		DESIGN			500
		CONSTRUCTION			1,998
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	3,000 C
106.		HAW, EAST HAWAII MANONO CAMPUS BUILDING RENOVATION AND NEW WEST HAWAII EDUCATION CENTER, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE HAWAII COMMUNITY COLLEGE MANONO CAMPUS AND FOR THE DEVELOPMENT OF THE NEW HAWAII COMMUNITY COLLEGE WEST HAWAII EDUCATION CENTER TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT, APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		100	
		DESIGN		1,000	
		CONSTRUCTION		8,800	
		EQUIPMENT		100	
		TOTAL FUNDING	UOH	10,000 C	C

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
107.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY AND CODE REQUIREMENTS.		885 7,955 8,840 C	C
		DESIGN			
		CONSTRUCTION			
		TOTAL FUNDING	UOH		
108.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAPITAL RENEWAL AND DEFERRED MAINTENANCE PROJECTS AT THE UNIVERSITY OF HAWAII. PROJECT TO INCLUDE RE-ROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.		1 9,213 97,785 1 107,000 C	1 1,000 26,283 1 27,285 C
		PLANS			
		DESIGN			
		CONSTRUCTION			
		EQUIPMENT			
		TOTAL FUNDING	UOH		
109.		SYS, INFORMATION TECHNOLOGY CENTER, STATEWIDE CONSTRUCTION AND EQUIPMENT FOR AN INFORMATION TECHNOLOGY AND EMERGENCY OPERATIONS CENTER BUILDING TO SERVICE THE UNIVERSITY OF HAWAII SYSTEM AND THE MANOA CAMPUS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF A NEW FACILITY, AND ALL PROJECT RELATED COSTS.		37,979	
		CONSTRUCTION			
		EQUIPMENT			2,813
		TOTAL FUNDING	UOH	12,660 C	C
			UOH	25,319 E	2,813 E
110.		SYS, UNIVERSITY OF HAWAII PROJECT ADJUSTMENT FUND, STATEWIDE PLANS FOR A PROJECT ADJUSTMENT FUND FOR THE UNIVERSITY OF HAWAII.			
		PLANS		1	1
		TOTAL FUNDING	UOH	1 C	1 C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

## H. CULTURE AND RECREATION

## AGS881 - STATE FOUNDATION ON CULTURE AND THE ARTS

## 1. MAUI ARTS &amp; CULTURAL CENTER, MAUI

CONSTRUCTION OF FINAL PHASE OF STAGE 3 OF "COMPLETING PUNDY'S DREAM" CAMPAIGN. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CONSTRUCTION	250	
TOTAL FUNDING AGS	250 C	

## LNR806 - PARKS ADMINISTRATION AND OPERATION

## 2. H54 STATE PARKS ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS, STATEWIDE.

DESIGN AND CONSTRUCTION OF ENERGY EFFICIENCY IMPROVEMENTS AND CONSERVATION IMPROVEMENTS.

DESIGN	1	
CONSTRUCTION	999	
TOTAL FUNDING LNR	1,000 C	

## 3. KAUAI PLANNING AND ACTION ALLIANCE, INC., KAUAI

PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RECONSTRUCTION OF NA PALI COAST STATE WILDERNESS PARK TRAIL, MILES 3 THROUGH 8. PROJECT TO INCLUDE THE INSTALLATION OF SAFETY FEATURES INCLUDING WARNING SIGNS. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.

PLANS	200	
DESIGN	150	
CONSTRUCTION	700	
EQUIPMENT	3	
TOTAL FUNDING LNR	1,053 C	

## 4. FRIENDS OF IOLANI PALACE, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT OF HURRICANE PROTECTION SYSTEMS FOR IOLANI PALACE AND TO RESTORE, REPAIR, AND REFINISH FACILITIES WITHIN THE PALACE COMPLEX, INCLUDING THE BARRACKS (HALE KOA) AND THE KANAINA BUILDING (OLD ARCHIVES). THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.

DESIGN	10	
CONSTRUCTION	305	
EQUIPMENT	85	
TOTAL FUNDING LNR	400 C	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	EXPENDING TITLE	FISCAL YEAR	M O F	FISCAL YEAR O F
		AGENCY	2009-2010		2010-2011
LNR801 - OCEAN-BASED RECREATION					
5.		KAWAIHAE HARBOR, SOUTH BASIN, HAWAII			
		DESIGN FOR A PAVED ACCESS ROADWAY AND WATER SYSTEM IMPROVEMENTS.			
		DESIGN		280	
		TOTAL FUNDING LNR		280 C	C
6.		PORT ALLEN SMALL BOAT HARBOR, KAUAI			
		PLANS AND DESIGN OF NEW CONCRETE PIERS, UTILITIES AND RELATED IMPROVEMENTS.			
		PLANS		150	
		DESIGN		150	
		TOTAL FUNDING LNR		300 C	C
7.		PORT ALLEN SMALL BOAT HARBOR, KAUAI			
		PLANS AND DESIGN OF NEW PIERS, UTILITIES, ROAD AND PARKING IMPROVEMENTS.			
		PLANS		275	
		DESIGN		275	
		TOTAL FUNDING LNR		550 C	C
8.		MAALAEA SMALL BOAT HARBOR, MAUI			
		DESIGN AND CONSTRUCTION FOR SEWER, ELECTRICAL, AND OTHER HARBOR IMPROVEMENTS, INCLUDING THE INSTALLATION OF PUMP-OUT FACILITIES.			
		DESIGN		1	
		CONSTRUCTION		2,499	
		TOTAL FUNDING LNR		2,500 C	C
AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM					
9.	Q104	LUMP SUM HEALTH AND SAFETY, ALOHA STADIUM, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE MITIGATION/ELIMINATION OF CONDITIONS THAT MAY BECOME HAZARDOUS TO HEALTH AND SAFETY, INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS TO THE ALOHA STADIUM TO MEET CODE, SAFETY, AND/OR OPERATIONAL REQUIREMENTS.			
		PLANS		100	100
		DESIGN		3,900	1,000
		CONSTRUCTION		11,000	11,000
		TOTAL FUNDING AGS		15,000 C	12,100 C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

## I. PUBLIC SAFETY

## PSD404 - WAIAWA CORRECTIONAL FACILITY

1.		WAIAWA CORRECTIONAL FACILITY, WASTEWATER IMPROVEMENTS, OAHU			
		DESIGN OF IMPROVEMENTS TO THE WASTEWATER SYSTEM TO REMEDY DEFICIENCIES.			
		DESIGN		185	
		TOTAL FUNDING	PSD	185C	C

## PSD900 - GENERAL ADMINISTRATION

2.		MAUI ECONOMIC OPPORTUNITY, INC., MAUI			
		DESIGN AND CONSTRUCTION OF THE BEING EMPOWERED AND SAFE TOGETHER (BEST) REINTEGRATION PROGRAM HOUSE KE KAHUA AGRICULTURAL PROJECT. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		50	
		CONSTRUCTION		200	
		TOTAL FUNDING	PSD	250C	C

## DEF110 - AMELIORATION OF PHYSICAL DISASTERS

3.	A40	ENERGY SAVINGS IMPROVEMENTS AND RENEWABLE ENERGY PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT ENERGY EFFICIENT STATE OF THE ART BUILDING AIR CONDITIONING SYSTEMS TO REPLACE FAILING AND INEFFICIENT EQUIPMENT. PROJECT MAY ALSO IMPLEMENT EXTERNAL CONTROLS TO PROVIDE SET BACKS AND REDUCE ENERGY CONSUMPTION STATEWIDE BY USING RENEWABLE ENERGY TECHNOLOGIES TO REDUCE THE USE OF FOSSIL FUELS AND PROVIDE CLEAN AND RELIABLE ENERGY FOR HIGH CONSUMPTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		200	250
		CONSTRUCTION		2,860	2,030
		TOTAL FUNDING	DEF	710C	715C
			DEF	2,350N	1,565N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
4.	A45	BUILDING 19 RESTORATION, KALAELOA, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RESTORE, REPAIR OR RENOVATE BUILDING 19 KALAELOA, FORMER MESS HALL AT THE FORMER BARBERS POINT NAVAL AIR STATION (BPNAS). PROJECT WILL DEVELOP READINESS CENTER SPACE TO INCLUDE VAULT, ADMINISTRATIVE, STORAGE, LOCKER ROOM, CLASSROOM, ASSEMBLY HALL, PHYSICAL TRAINING, RESTROOMS, AND KITCHEN SPACE FOR HEADQUARTERS DETACHMENT OF THE HAWAII ARMY NATIONAL GUARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		400	
		CONSTRUCTION		5,000	
		EQUIPMENT			500
		TOTAL FUNDING	DEF	1,350 C	125 C
			DEF	4,050 N	375 N
5.	A46	MAIL DISTRIBUTION CENTER, BUILDING 175 REMODEL, KALAELOA, OAHU			
		CONSTRUCTION AND EQUIPMENT TO REMODEL BUILDING 175 KALAELOA INTO A MAIL DISTRIBUTION CENTER FOR THE HAWAII ARMY NATIONAL GUARD (HIARNG). PROJECT WILL PROVIDE SPACE TO SORT AND INSPECT INCOMING AND OUTGOING OFFICIAL MAIL AND PACKAGES FOR DISTRIBUTION TO/FROM UNITS OF HIARNG. WORK TO INCLUDE CARPENTRY, MECHANICAL REMODELING, DEMOLITION, MASONRY, AND PAVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,100	
		EQUIPMENT			75
		TOTAL FUNDING	DEF	275 C	C
			DEF	825 N	75 N
6.	C13	DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		165	165
		CONSTRUCTION		1,806	1,148



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		EQUIPMENT		433	246
		TOTAL FUNDING	AGS	2,306C	1,461C
			AGS	100N	100N
7.	C35	AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR THE DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	
		CONSTRUCTION		1,550	1,650
		TOTAL FUNDING	AGS	900C	825C
			AGS	900N	825N
8.	A0201	BIRKHIMER TUNNEL AND SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL, AND SUPPORT FACILITIES TO INCLUDE AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE, SPRINKLER SYSTEM, ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		23	25
		CONSTRUCTION		400	425
		EQUIPMENT		75	123
		TOTAL FUNDING	AGS	500C	575C
9.	AD2071	RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES AND TO INCREASE THE NUMBER OF PUBLIC SHELTERS STATEWIDE.			
		PLANS		1	1
		LAND		1	1
		DESIGN		298	23
		CONSTRUCTION		1,700	600
		EQUIPMENT		1,500	375
		TOTAL FUNDING	AGS	3,500C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F

K. GOVERNMENT-WIDE SUPPORT  
GOV100 - OFFICE OF THE GOVERNOR

1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.			
		PLANS		1	1
		TOTAL FUNDING GOV		1C	1C

BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION

2.	00-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE			
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.			
		CONSTRUCTION		30,000	30,000
		TOTAL FUNDING BUF		30,000C	30,000C
3.	00-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT FUND, STATEWIDE			
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.			
		CONSTRUCTION		239,851	50,586
		TOTAL FUNDING BUF		239,851C	50,586C
4.		BISHOP MUSEUM, RENOVATION OF POLYNESIAN HALL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE POLYNESIAN HALL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		750	
		EQUIPMENT		250	
		TOTAL FUNDING AGS		1,000C	C

AGS131 - INFORMATION PROCESSING SERVICES

5.	Q102	LUMP SUM HEALTH AND SAFETY, INFORMATION AND COMMUNICATION SERVICES DIVISION, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL COMMUNICATIONS BACKBONE SYSTEMS, INCLUDING THE STATEWIDE ANUENUE AND HAWAIIAN MICROWAVE SYSTEMS AND THE WINDWARD, NORTH SHORE, AND CENTRAL OAHU RADIO SITES.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2009-2010 F	2010-2011 F
		PLANS		275	
		LAND		125	
		DESIGN		475	
		CONSTRUCTION		5,550	
		EQUIPMENT		2,500	
		TOTAL FUNDING	AGS	8,925 C	C

## LNR101 - PUBLIC LANDS MANAGEMENT

## 6. E00B BEACH IMPROVEMENTS, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO WAIKIKI BEACH OR OTHER VISITOR AREA RESORT BEACHES.

PLANS		250	
DESIGN		250	
CONSTRUCTION		7,000	
TOTAL FUNDING	LNR	1,500 B	B
	LNR	4,000 R	R
	LNR	2,000 U	U

## 7. KAUAI PUBLIC LAND TRUST, KAUAI

PLANS FOR THE ACQUISITION AND LONG-TERM MANAGEMENT OF THE SITE FORMERLY KNOWN AS COCO PALMS RESORT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS		234	
TOTAL FUNDING	LNR	234 C	C

## AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION

## 8. E109 CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT AND EXEMPT FROM CHAPTER 76 CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.

PLANS		7,361	7,361
LAND		1	1
DESIGN		1	1
CONSTRUCTION		1	1
EQUIPMENT		1	1
TOTAL FUNDING	AGS	7,365 C	7,365 C

CAPITAL IMPROVEMENT PROJECTS						
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M	FISCAL M	
				YEAR O	YEAR O	
				2009-2010 F	2010-2011 F	
9.	P60131	ENERGY CONSERVATION AND SUSTAINABLE DESIGN IMPROVEMENTS, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE ENERGY CONSERVATION PLAN TO MAXIMIZE ENERGY EFFICIENCY IN PUBLIC FACILITIES AND OPERATIONS. EFFORTS WILL INCLUDE CONSIDERATION FOR SUSTAINABLE DESIGN TO THE FULLEST EXTENT POSSIBLE.				
		PLANS		250		
		DESIGN		500		
		CONSTRUCTION		8,289		
		EQUIPMENT		10		
		TOTAL FUNDING	AGS	9,049 C		C
10.	Q101	LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, OTHER REPAIRS, AND IMPROVEMENTS.				
		PLANS		50		50
		LAND		1		1
		DESIGN		200		200
		CONSTRUCTION		4,740		4,740
		EQUIPMENT		9		9
		TOTAL FUNDING	AGS	5,000 C		5,000 C
11.		DIAMOND HEAD THEATER, OAHU				
		PLANS, DESIGN AND PERMITTING FOR A NEW BUILDING. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS		25		
		DESIGN		25		
		TOTAL FUNDING	AGS	50 C		C
SUB401 - COUNTY OF MAUI						
12.		IMI KALA STREET EXTENSION, IAO STREAM BRIDGE IMPROVEMENTS, MAUI				
		DESIGN AND CONSTRUCTION FOR IAO STREAM BRIDGE AT IMI KALA STREET EXTENSION CONNECTING WAILUKU AND WAIEHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		500		
		CONSTRUCTION		2,500		
		TOTAL FUNDING	COM	3,000 C		C

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.		NAHIKU COMMUNITY CENTER, MAUI			
		PLANS AND DESIGN FOR IMPROVEMENTS TO THE NAHIKU COMMUNITY CENTER. MATCHING FUNDS TO BE PROVIDED BY THE COUNTY OF MAUI.			
		PLANS		50	
		DESIGN		200	
		TOTAL FUNDING	COM	250 C	C
SUB501 - COUNTY OF KAUAI					
14.		WAILUA EMERGENCY BYPASS ROAD, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND RESURFACING TO THE WAILUA EMERGENCY BYPASS ROAD.			
		PLANS		25	
		DESIGN		25	
		CONSTRUCTION		900	
		TOTAL FUNDING	COK	950 C	C
15.		WAIMEA CANYON SCHOOL WATERLINE IMPROVEMENTS, KAUAI			
		CONSTRUCTION FOR THE INSTALLATION OF APPROXIMATELY 2,000 LINEAR FEET OF 12-INCH WATERLINE ALONG KAUMUALI'I HIGHWAY BETWEEN HUAKAI AND MOANA ROADS AND APPROXIMATELY 1,900 LINEAR FEET OF 12-INCH WATERLINE ALONG WAIMEA CANYON DRIVE BETWEEN KAUMUALI'I HIGHWAY AND HAINA ROAD.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING	COK	2,500 C	C

## PART V. CAPITAL IMPROVEMENT PROGRAM PROVISIONS

SECTION 63. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,855,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for Hawaii community development authority's community development districts and capital improvement program staff costs, statewide; provided further that the Hawaii community development authority shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the Hawaii community development authority's website; and provided further that the Hawaii community development authority shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 64.** Provided that of the special funds and other funds appropriations for airports administration (TRN 195), the sums of \$2,450,000 and \$100,000 respectively or so much thereof as may be necessary for fiscal year 2009-2010 and the same sums or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for airports division capital improvements program project staff costs, statewide; provided further that the airports division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of transportation's website; and provided further that the airports division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 65.** Provided that of the revenue bond appropriation for harbors administration (TRN 395), the sum of \$786,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$840,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for HMP harbors division capital improvements program staff costs, statewide; provided further that the harbors division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of transportation's website; and provided further that the harbors division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 66.** Provided that of the special funds and other federal funds appropriations for highways administration (TRN 595), the sums of \$12,500,000 and \$6,000,000 respectively or so much thereof as may be necessary for fiscal year 2009-2010 and the same sums or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for highways division capital improvements program projects staff costs, statewide; provided further that the highways division shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of transportation's website; and provided further that the highways division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 67.** Provided that of the general obligation bond fund appropriation for land and natural resources – natural physical environment (LNR 906), the sum of \$2,688,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for department of land and natural resources capital improvements program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project funded staff

services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of land and natural resources' website; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 68. Provided that of the special funds appropriation for school support (EDN 400), the sum of \$4,800,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for department of education capital improvements program project positions, statewide; provided further that the department of education shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of education's website; and provided further that the department of education shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 69. Provided that of the general obligation bond fund appropriation for public works – planning, design, and construction (AGS 221), the sum of \$7,365,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for department of accounting and general services capital improvements program staff costs, statewide; provided further that the department of accounting and general services shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of accounting and general services' website; and provided further that the department of accounting and general services shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 70. Provided that of the general obligation bond fund appropriation for Hawaii health systems corporation - corporate office (HTH 210), the sum of \$20,222,000, or so much thereof as may be necessary for fiscal year 2009-2010, shall be expended by the Hawaii health systems corporation as follows:

1. \$4,700,000 shall be used for renovations and air conditioning upgrade to minimize vog infiltration into Kau hospital;
2. \$1,200,000 shall be used to upgrade the wastewater system and grease trap at Kula hospital;
3. \$1,000,000 shall be used for the implementation of seismic mitigation measures at Kona community hospital;
4. \$198,000 shall be used to replace the metal housing on the electric substation vault at Maluhia hospital;

5. \$1,037,000 shall be used to reroof the ancillary wing, medical office building and housing units at the west Kauai medical center campus;
6. \$670,000 shall be used for infrastructure improvements for new generators at Maui memorial medical center;
7. \$1,261,000 shall be used to upgrade the nurse call system at Leahi hospital;
8. \$91,000 shall be used to replace helipad lights at Hilo medical center;
9. \$1,261,000 shall be used to replace the nurse call system at Kona community hospital;
10. \$554,000 shall be used to replace flooring and waterproof patient bathrooms at Maluhia hospital;
11. \$639,000 shall be used to replace the nurse call system at Kau hospital;
12. \$2,300,000 shall be used for a new helipad at Maui memorial medical center;
13. \$915,000 shall be used to upgrade the wastewater treatment plant at Kona community hospital;
14. \$410,000 shall be used to reroof the hospital building at Maluhia hospital;
15. \$2,000,000 shall be used toward Maluhia hospital for the inspection of an auxiliary parking lot and access road for Keola street residents via the Kuakini street extension;
16. \$150,000 shall be used for grease trap upgrades at Leahi Hospital;
17. \$240,000 shall be used for spalling repair and painting at Leahi hospital;
18. \$1,596,000 shall be used to reroof various buildings at Samuel Mahelona Memorial Hospital;

provided further that Hawaii health systems corporation may use the balance of the general obligation bond fund appropriation for Hawaii health systems corporation - corporate office (HTH 210), if any, to correct health and safety deficiencies, to supplement the projects identified above or to fund other projects; provided further that the Hawaii health systems corporation may deviate from the projects and amounts identified above to handle emergencies; and provided further that Hawaii health systems corporation shall submit a report to the legislature identifying the projects funded or intended to be funded by this appropriation no later than twenty days prior to the convening of the 2010 regular session.

SECTION 71. Provided that of the general obligation bond fund appropriation for adult and community care services (HMS 601), the sum of \$400,000 for fiscal year 2009-2010 shall be used by the La'a Kea Foundation for plans, design and construction for the Sunrise Farm Community of Maui; provided further that no funds shall be expended unless matched on a 1:4 (private/state) basis.

SECTION 72. Provided that of the general obligation bond fund appropriation for the County of Maui (SUB 401), the sum of \$3,000,000 for Fiscal Year 2009-2010 shall be used by the County of Maui for design and construction of the Iao Stream Bridge at the Imi Kala Street extension, connecting Wailuku and Waiehu; provided further that no funds shall be expended unless full commitment is made by the County of Maui to fund and complete construction of the road portion of this project.



SECTION 73. Act 213, Session Laws of Hawaii 2007, section 125, as amended by Act 158, Session Laws of Hawaii 2008, section 5, is amended:

(1) By amending Item B-10.07 to read:

“ ‘IN DIS LIFE, KAUAI  
 DESIGN, CONSTRUCTION ~~[AND]~~  
 EQUIPMENT AND ALL OTHER RELATED  
 COSTS FOR THE YOUTH REHABILITATION/  
 EMPOWERMENT PROGRAM. THIS PROJECT  
 QUALIFIES AS A GRANT PURSUANT TO  
 CHAPTER 42F, HRS.  
 DESIGN  
 CONSTRUCTION  
 EQUIPMENT  
 TOTAL FUNDING LBR C 10  
~~189]25~~  
~~1125~~  
 200C”

(2) By amending Item C-75.02 to read:

“75.02. S339 INTERSTATE ROUTE H-1, ~~[SCHOOL ST]~~ DRAINAGE  
 IMPROVEMENTS AND SCHOOL ST ON-RAMP RETAINING WALL  
~~[REPLACEMENT]~~ IMPROVEMENTS, OAHU  
 CONSTRUCTION FOR REPLACING ~~AND/~~  
~~OR EXTENDING AND REPAIRING~~ THE  
 EXISTING SCHOOL STREET ON-RAMP  
 RETAINING WALL AND PROVIDING  
 SLOPE STABILIZATION, INCLUDING THE  
 INSTALLATION OF DRAINAGE FACILITIES,  
~~[ALONG] IN THE VICINITY OF THE~~  
 SCHOOL STREET RAMPS.<sup>2</sup> THIS PROJECT  
 IS DEEMED NECESSARY TO QUALIFY  
 FOR FEDERAL AID FINANCING AND/OR  
 REIMBURSEMENT.  
 CONSTRUCTION  
 TOTAL FUNDING TRN E 9000  
 N 8999 E  
 1N”

(3) By amending Item C-88 to read:<sup>1</sup>

“88. S329 KAMEHAMEHA HIGHWAY REHABILITATION ~~AND/OR~~  
~~REPLACEMENT~~ OF WAIKANE STREAM BRIDGE, OAHU  
 LAND ACQUISITION AND DESIGN  
 FOR THE REHABILITATION ~~AND/OR~~  
~~REPLACEMENT~~ OF WAIKANE STREAM  
 BRIDGE TO INCLUDE BRIDGE RAILINGS,  
 SHOULDERS, AND OTHER IMPROVEMENTS.  
 THIS PROJECT IS DEEMED NECESSARY TO  
 QUALIFY FOR FEDERAL AID FINANCING  
 AND/OR REIMBURSEMENT.  
 LAND  
 DESIGN  
 TOTAL FUNDING TRN 120 E 240  
 480 N 600  
 50 E  
 190 N”

(4) By amending Item C-89 to read:

“89. P70019 HAWAII BELT ROAD (ROUTE 19) AND PAPAIKOU MILL ROAD  
 INTERSECTION, HAWAII  
 DESIGN AND CONSTRUCTION FOR  
~~[INSTALLATION OF TRAFFIC SIGNAL-~~  
~~SYSTEM]~~ TRAFFIC SAFETY IMPROVEMENTS  
 AT HAWAII BELT ROAD (ROUTE 19) AND  
 PAPAIKOU MILL ROAD INTERSECTION.  
 DESIGN 40

CONSTRUCTION				
TOTAL FUNDING	TRN	[360]760		B"
		[400]800B		

(5) By amending Item C-99 to read:

"99. V097	PUUNENE AVENUE WIDENING, <del>[WAKEA AVENUE]</del> <u>KAMEHAMEHA AVENUE</u> TO KUIHELANI HIGHWAY, MAUI			
	LAND ACQUISITION AND DESIGN FOR THE WIDENING OF PUUNENE AVENUE FROM <del>[WAKEA AVENUE]</del> <u>KAMEHAMEHA</u> <u>AVENUE</u> TO KUIHELANI HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
	LAND			25
	DESIGN	500		
	TOTAL FUNDING	TRN	100 E	5 E
		TRN	400 N	20 N"

(6) By amending Item C-110 to read:<sup>1</sup>

"110. T127	KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO <u>VICINITY OF</u> SHOWER DRIVE, HAWAII			
	CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDERS AND CONSTRUCTING NEW SHOULDERS <del>[ON THE INBOUND SIDE OF THE HIGHWAY]</del> . THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
	CONSTRUCTION			6600
	TOTAL FUNDING	TRN	E	1320 E
		TRN	N	5280 N"

(7) By amending Item F-10 to read:

"10. P70039	LA'A KEA FOUNDATION, MAUI			
	<u>PLANS, DESIGN, AND CONSTRUCTION</u> FOR THE SUNRISE FARM COMMUNITY OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
	<u>PLANS</u>		1	
	DESIGN	[447] 446		
	CONSTRUCTION		1	
	TOTAL FUNDING	HMS	448 C	C"

(8) By amending Item F-14 to read:

"14. P70041	WAIMANALO HOMELESS SHELTER, OAHU			
	<u>PLANS [AND], DESIGN, AND</u> <u>CONSTRUCTION FOR A COMMUNITY</u> <u>CENTER FOR A HOMELESS SHELTER IN</u> <u>WAIMANALO.</u>			
	PLANS		1	
	DESIGN	[299] 298		
	<u>CONSTRUCTION</u>		1	
	TOTAL FUNDING	HMS	300 C	C"

(9) By amending item G-91 to read:

"91. P70108 WAIAKEA HIGH SCHOOL, HAWAII

~~[PLANS AND DESIGN] EQUIPMENT AND APPURTENANCES FOR A NEW ALL WEATHER TRACK AND FIELD FACILITY[- GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES].~~

<del>PLANS</del>	1
<del>DESIGN</del>	399]
<del>EQUIPMENT</del>	400
TOTAL FUNDING EDN	400B

B"

(10) By amending Item G-104 to read:

"P70119 MALAMA LEARNING CENTER, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR A SUSTAINABLE BUILDING FOR SCIENCE, CONSERVATION, CULTURE, AND ARTS EDUCATION IN WEST OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS	1	1
DESIGN	1	1
CONSTRUCTION	273	498
TOTAL FUNDING <del>EDN</del> HHL	275C	500C"

SECTION 74. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-85A	\$17,446 C

SECTION 75. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1997, section 140A,<sup>1</sup> as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
I-10	\$92,527 C

SECTION 76. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-16A	\$2,106 C

SECTION 77. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-8B	\$23,523 C
G-54A	19,182 C
G-54E	104,155 C

SECTION 78. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
K-7	\$1,580,863 C
K-8	1,808,318 C

SECTION 79. Any law to the contrary notwithstanding, the appropriations under Act 178, Session Laws of Hawaii 2005, section 85, as amended and renumbered by Act 160, Session Laws of Hawaii 2006, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
H-14.01	\$2,500,000 C

SECTION 80. Any law to the contrary notwithstanding, the appropriations under Act 213, Session Laws of Hawaii 2007, section 125, as amended and renumbered by Act 158, Session Laws of Hawaii 2008, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-7	\$400,000 C
A-9	125,000 C
A-9.01	200,000 C
A-10	260,000 C
A-11.02	\$50,000 C
A-14	179 C
A-18	125,000 C
B-1	100,000 C
B-7	75,000 C
B-9	250,000 C
B-10.04	500,000 C
C-74	1,200,000 C
D-3.03	100,000 C
E-9	250,000 C
E-13	80,000 C
E-16	125,000 C
E-16.01	200,000 C
E-19	1,800,000 C
F-1	75,000 C
F-16.01	1,454,000 C
F-18	550,000 C
G-16	125,000 B
G-17	1,500,000 B
G-20	100,000 B
G-22.01	1,200,000 B
G-23.01	100,000 B
G-24	3,100,000 B
G-26	168,000 B
G-28.01	646,000 B
G-31	1,500,000 B
G-34	250,000 B

G-37	65,000 B
G-37.02	850,000 B
G-38	1,250,000 B
G-39	1,000,000 B
G-41	300,000 B
G-42	500,000 B
G-43	85,000 B
G-52	1,000,000 B
G-53.01	750,000 B
G-56	500,000 B
G-60	410,000 B
G-63	6,000,000 B
G-67	8,082,000 B
G-77	1,560,000 B
G-80	500,000 B
G-80.01	200,000 B
G-86.01	400,000 B
G-92	500,000 B
G-93	40,000 B
G-95	900,000 B
G-96	2,600,000 B
G-97	100,000 B
G-99	670,000 B
G-102	75,000 B
G-103	650,000 B
G-106	250,000 C
H-2	250,000 C
H-3	100,000 C
H-14	300,000 C
I-1	1,150,000 C
I-2	850,000 C
I-5	5,000,000 C
K-3	37,676,000 C
K-8	250,000 C
K-15	50,000 C
K-16	250,000 C
K-25	100,000 C

## PART VI. ISSUANCE OF BONDS

**SECTION 81. AIRPORT REVENUE BONDS.** The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned airport

revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof, and passenger facility charges pursuant to section 261-5.5, Hawaii Revised Statutes, as amended, and as determined by the department. The expenses of the issuance of such airport revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the airport revenue fund and passenger facility charge special fund as determined by the department.

The governor, in the governor's discretion, is authorized to use the airport revenue fund and passenger facility charge special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 82. HARBOR REVENUE BONDS.** The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds; provided that the governor shall submit a report to the legislature of

all uses of this authority for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 83. HIGHWAY REVENUE BONDS.** The department of transportation is authorized to issue highway revenue bonds for highway capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the state highway fund.

The governor, in the governor's discretion, is authorized to use the state highway fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by highway revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 84. UNIVERSITY OF HAWAII REVENUE BONDS.** The University of Hawaii board of regents is authorized to issue revenue bonds for capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in principal amounts as are required to yield the amounts appropriated for capital improvement program projects, and if determined by the board of regents and approved by the governor, any additional principal amount deemed necessary by the board of regents to pay interest on the revenue bonds during the estimated period of construction of the capital improvement program project for which the revenue bonds are issued, to establish, maintain, or increase reserves for the revenue bonds, and to pay all or any part of the expenses related to the issuance

of the revenue bonds. The revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as amended, except that the bonds shall be issued in the name of the University of Hawaii and not in the name of the State. The principal of and interest on the revenue bonds, to the extent not paid from the proceeds of the revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the University of Hawaii or operated and managed by the University of Hawaii, or any part thereof as the board of regents may determine, including other moneys, rates, rents, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of university facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of the revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the special funds of the University of Hawaii.

The governor, in the governor's discretion, is authorized to use University of Hawaii special funds to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by University of Hawaii revenue bonds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

#### SECTION 85. HAWAIIAN HOME LANDS REVENUE BONDS.

The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such Hawaiian home lands revenue bonds during the estimated period of construction of the capital improvements program project for which such Hawaiian home lands revenue bonds are issued, to establish, maintain, or increase reserves for the Hawaiian home lands revenue bonds heretofore authorized (whether authorized and issued or authorized and still unused), and to pay the expenses of issuance of such bonds. The aforementioned Hawaiian home lands revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as amended. The principal of and interest on Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from Hawaiian home lands, revenues from available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the Hawaiian home lands special fund.

The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by Hawaiian home lands revenue bond funds; provided that the governor



shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

## PART VII. SPECIAL PROVISIONS

**SECTION 86. GOVERNOR'S DISCRETIONARY POWERS.** Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

**SECTION 87.** Provided that all general obligation bond funds used for a public undertaking, improvement, or system designated by the letter (D) shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement, or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed as provided by section 174-21 and chapter 201H, Hawaii Revised Statutes, respectively.

**SECTION 88.** Provided that in the event that the authorized appropriations specified for a capital improvement project listed in this Act are insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special fund or revolving fund responsible for cash or debt service payments for the projects, or transfer unrequired balances from other unexpired projects in this Act or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, revenue bond funds, or revolving funds; provided further that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

**SECTION 89.** Provided that in the event that the authorized appropriations specified for a capital improvement project listed in this Act are insufficient and where the source of funding is designated as airport passenger facility charge funds, the governor may make supplemental allotments from the airport revenue fund or airport revenue bond funds, or transfer unrequired balances from other unexpired projects in this Act or prior appropriation acts that authorized the use of airport passenger facility charge funds; provided further that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; provided further that the governor, at the governor's discretion, is authorized to increase the passenger facility charge fund authorization ceiling for the program to accommodate the expenditure of such funds; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 90. Provided that the governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or any other prior or future act which has not lapsed; provided further that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 91. Provided that after the objectives and purposes of appropriations made in this Act from the general obligation bond fund for capital improvement projects have been met, unrequired balances, except those from University of Hawaii projects, shall be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act, and shall be considered a supplementary appropriation thereto; provided further that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2012, as provided in section 96 of this Act; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 92. Provided that in the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 93. Provided that after the objectives and the purposes of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 94. Provided that in the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities

ties improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided further that the supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project and may only be made to supplement currently authorized capital investment project cost elements; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 95. Provided that after the objectives and the purposes of appropriations made in this Act from the general obligation bond fund for capital improvement projects for the University of Hawaii have been met, any unrequired balances shall be transferred to the University of Hawaii project adjustment fund appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 96. Provided that any law or provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided further that all appropriations made to be expended in fiscal biennium 2009-2011 that are unencumbered as of June 30, 2012, shall lapse as of that date; provided further that this lapsing date shall not apply to: (a) appropriations for projects described in section 62 of this Act where the means of funding is designated to be the state educational facilities improvement special fund, where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities; and (b) non-general fund appropriations for projects described in section 62 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.

SECTION 97. Provided that where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 98. Provided that in releasing funds for capital improvement projects, the governor shall consider legislative intent and the objectives of the user agency and its programs; the scope and level of the user agency's intended service; and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State; and provided further that agencies responsible for construction shall take into consideration legislative intent, the objectives of the user agency and its programs, and the scope and level of the user agency's intended service, and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 99. Provided that with the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of projects when it is determined advantageous to do so by both the original expending agency and the agency to which expending authority is to be delegated; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 100. Provided that where county capital improvement projects are partially or totally funded by state grants as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 101. Provided that the governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters or unforeseen emergencies, when the effects of the natural disasters or unforeseen emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 102. Provided that notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided further that the effects of such natural disasters or emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the use of such funds does not conflict with general law; provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 103. Provided that no appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 104. Provided that whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency as provided by law.

SECTION 105. Provided that in the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 106. Provided that in the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 107. Provided that the governor may approve the expenditure of federal stimulus funds for operating and capital improvement purposes designated with the letter "V" which are in excess of levels authorized by the legislature; provided further that the governor may allow for an increase in the federal stimulus fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor's approval to expend these funds, the governor shall submit a report to the legislature; provided further that the report shall include the date the program to receive the federal stimulus funds was first notified that additional federal stimulus funds may be available, the date that additional federal stimulus funds were known to be available, and an explanation of the public benefit; and provided further that the governor shall submit a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 108. Provided that the governor may approve the expenditure of federal funds designated with the letter "N" for operating and capital improvement purposes which are in excess of levels authorized by the legislature only in the event that the expenditure is made for the benefit of the public; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor's approval to expend these funds the governor shall submit a report to the legislature; provided further that the report shall include the date when the program to receive the federal funds was first notified that additional federal funds may be available, the date that additional federal funds were known to be available, and the reasons why additional federal fund appropriations were not sought during the preceding legislative session, and an explanation of the public benefit; provided further that in the event of federal funds received as a result of a natural or manmade disaster, the governor shall submit notification to the legislature within five days after the governor's approval to expend funds has been granted; and provided further that

the governor shall submit a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 109. Provided that where an agency is authorized to secure funds or other property from private organizations or individuals to be expended or utilized in connection with any authorized program, the agency, with the governor's approval, may enter into such undertaking, provided that the provisions of the undertaking comply with applicable State constitutional and statutory requirements; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 110. Provided that except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources, or other appropriate agency; and provided further that private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 111. Provided that except as otherwise provided, or except as prohibited by specific grant conditions, all federal or non-general fund reimbursements received by state programs shall be returned to the general fund or fund of originating expenses.

SECTION 112. Provided that unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations within the same fund, within an expending agency, for operating purposes; provided further that for each fiscal year the cumulative amount of transfers for a means of financing (MOF) from a program ID shall not exceed ten per cent of the amount appropriated that fiscal year for that MOF of that program ID; provided further that for each fiscal year the cumulative amount of transfers for a MOF to a program ID shall not exceed ten per cent of the amount appropriated that fiscal year for that MOF of that program ID; provided further that the governor shall submit a report to the legislature within five days of each use of this proviso; provided further that the report shall include the date of transfer, the amount of the transfer, the program ID from which funds were transferred, the program ID to which funds were transferred, the impact to the program ID funds are transferred from, and a detailed explanation of the public purposes served by the transfer of resources; and provided further that the governor shall submit to the legislature a summary report containing the aforementioned information for each use of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 113. Provided that unless otherwise provided in this Act, section 112 notwithstanding, for the department of health, the department of human services, and the department of public safety, the governor is authorized to transfer operating funds between appropriations within the same fund, within an expending agency, for operating purposes; provided further that the governor

shall submit a report to the legislature within five days of each use of this proviso; provided further that the report shall include the date of transfer, the amount of the transfer, the program ID from which funds were transferred, the program ID to which funds were transferred, the impact to the program ID funds are transferred from, and a detailed explanation of the public purposes served by the transfer of resources; and provided further that the governor shall submit to the legislature a summary report containing the aforementioned information for each use of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 114. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that all such actions shall be with the prior approval of the governor and shall be consistent with appropriations provided in this Act and with provisions of part II of chapter 37, Hawaii Revised Statutes; provided further that the governor shall submit a report to the legislature within five days of each use of this proviso; provided further that the report shall include the date of the transfer, the position transferred, the program from which the position was transferred, the program to which the position was transferred, responsibilities of the position prior to transfer, the responsibilities of the position after the transfer, and the manner in which the transfer maximizes the utilization of personnel resources and staff productivity; and provided further that the governor shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 115. Any law or provision to the contrary notwithstanding, in expending funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be expended. Affected agencies shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures projected; and provided further that the department of budget and finance shall notify the legislature within five business days of each application of this proviso and submit a report of all applications of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 116. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services may delegate that responsibility and transfer funds to internal post audit (AGS 104), when it is determined by such agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 117. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for plans, land acquisi-



tion, design, construction, and equipment for repair and alterations may delegate responsibility and transfer funds to public works – planning, design, and construction (AGS 221) for the implementation of the repair and alterations, when it is determined by the agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 118. Agencies with appropriations authorized in part II of this Act for risk management costs shall transfer funds authorized for that purpose to state risk management and insurance administration (AGS 203) for the administration and implementation of state risk management costs and expenses, except as otherwise provided by law.

SECTION 119. With the approval of the governor, the Hawaii health systems corporation in the department of health may transfer to the department of human services funds appropriated to the Hawaii health systems corporation for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated critical access hospitals; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 120. With the approval of the governor, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 121. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care of indigents or medical indigents and to pay the department of health for such care; provided that with the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made as provided elsewhere in this Act; and provided further that the governor shall submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 122. Provided that of the appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 for fiscal year 2009-2010 and the sum of \$2,500 for fiscal year 2010-2011 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive head



of the department or agency (i.e., director, chairperson, comptroller, adjutant-general, superintendent, president, or attorney general).

SECTION 123. Provided that of the general fund appropriation for Hawaii state public library system (EDN 407), the sum of \$2,500 for fiscal year 2009-2010 and the sum of \$2,500 for fiscal year 2010-2011 may be used to establish a separate protocol account to be expended at the discretion of the state librarian.

SECTION 124. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$4,000 for fiscal year 2009-2010 and the sum of \$4,000 for fiscal year 2010-2011 may be used to establish a separate protocol account to be expended at the discretion of the director of finance for the promotion and improvement of state bond ratings and sales; provided further that the director of finance shall prepare a detailed report of all expenditures made from the protocol account that shall include the date of any expenditure, the purpose of any expenditure, the name of the entity that received the funds, and an explanation of the manner in which the expenditures promoted and improved the state bond ratings and sales; and provided further that the director of finance shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 125. Provided that the department of budget and finance shall post on its website all finance memorandums, executive memorandums, and administrative directives on the same day that the memorandums and directives are distributed; provided further that all attachments to the memorandums and directives shall also be posted; provided further that all finance memorandums, executive memorandums, and administrative directives issued since January 1, 2000, shall also be posted; provided further that the department of budget and finance shall post on its website all reports required for submission to the federal government related to the American Recovery and Reinvestment Act (ARRA) of 2009; provided further that a summary report of all ARRA program awards, expenditures, and encumbrances shall also be maintained on the website and updated on a monthly basis; and provided further that a listing of all outstanding applications for ARRA funding shall be maintained on the website and updated monthly.

SECTION 126. Provided that of the special fund appropriation for spectator events and shows - Aloha Stadium (AGS 889), the sum of \$2,500 for fiscal year 2009-2010 and the sum of \$2,500 for fiscal year 2010-2011 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

SECTION 127. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than \$1,655,338 and the incoming administration shall not expend or encumber more than \$713,014 of the general fund appropriation.

SECTION 128. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than \$360,823 and

the incoming administration shall not expend or encumber more than \$180,824 of the general fund appropriation.

SECTION 129. Provided that of the appropriations authorized for executive programs in part II of this Act for fiscal year 2009-2010 and fiscal year 2010-2011, settlements and judgments approved by the legislature in House Bill No. 1016, H.D. 2, S.D. 1, C.D. 1,<sup>3</sup> the Claims Bill, shall be funded within each program's departmental allocation for the respective fiscal year.

SECTION 130. Provided that in the event that the amount of settlements and judgments approved by the legislature in House Bill No. 1016, H.D. 2, S.D. 1, C.D. 1,<sup>3</sup> the Claims Bill, exceeds program allocations for fiscal year 2009-2010 or fiscal year 2010-2011, as applicable, for the purposes of meeting such obligations:

- (1) A department, with the approval of the governor, is authorized to utilize allocated savings determined to be available from any other program within the department; and
- (2) Unless otherwise provided by general law, the governor is authorized to transfer funds between allocations of appropriations within a department for the purposes of paying settlements and judgments of a program;

and provided further that the governor shall submit a report of all uses of this proviso for the previous twelve month period no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 131. The director of finance is authorized to expend general fund, special fund, and revolving fund savings or balances determined to be available from authorized general fund, special fund, and revolving fund program appropriations, up to an aggregate total of \$20,000,000 for fiscal year 2009-2010 and \$20,000,000 for fiscal year 2010-2011, for municipal lease payments under financing agreements entered into pursuant to chapter 37D, Hawaii Revised Statutes, to finance the acquisition of depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment; provided further that designated expending agencies (including the department of education and the University of Hawaii) for municipal lease payments and for depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment authorized in this Act may delegate to the director of finance the implementation of such acquisitions when it is determined by all involved agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 132. Provided that for all notification and reporting requirements in this Act, copies of the notification or report shall be submitted to the senate president's office, the speaker of the house of representatives' office, the senate ways and means committee chairperson's office, the house of representatives' finance committee chairperson's office, and to the appropriate standing committees' chairperson's office that has oversight responsibilities over the state program affected; and provided further that the notification and report shall be posted on the website of the agency responsible for submitting the notification or report.

SECTION 133. Notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available of general funds from any program in this Act, up to an aggregate total of \$500,000, to supplement the department of land and natural resources' fire-fighter's contingency fund; provided further that these funds shall be used to prevent, control, and extinguish wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves, and to fulfill mutual aid agreements in cooperation with fire control agencies of the counties and federal government.

SECTION 134. Provided that no funds, including federal funds, shall be expended to fill any position not authorized by the legislature; provided further that this prohibition shall not apply to:

- (1) The University of Hawaii and the Hawaii health systems corporation;
- (2) Positions entirely federally funded;
- (3) Positions established pursuant to section 76-16(b) subsections (3), (13), (21), and (23), Hawaii Revised Statutes;
- (4) Where an agency has explicit statutory authorization to establish positions to accomplish necessary functions; or
- (5) Temporary positions funded wholly or partially with federal funds from the American Recovery and Reinvestment Act of 2009;

provided further that with regard to any of the positions identified in paragraphs (1), (2), (3), (4), or (5), the respective agency or department shall submit a report to the legislature within ten days of each use of this provision; provided further that the report shall include:

- (1) Authority used to establish the position;
- (2) Date the position was established;
- (3) Projected date the position will be filled;
- (4) Amounts projected to be expended in fiscal year 2009-2010 and in fiscal year 2010-2011;
- (5) Source of funds used to pay for the position; and
- (6) Functions to be performed by the position;

and provided further that the department of budget and finance shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 135. Provided that the state auditor shall perform a financial audit of the department of transportation; provided further that this report shall include, but not be limited to, an analysis of accounting procedures, procurement practices, controls over lease renewals and renegotiations, ability to monitor and collect outstanding receivables, and means of accurately charging fees; and provided further that the office of the auditor shall provide this report to the legislature no later than twenty days prior to convening of the 2010 regular session.

SECTION 136. Provided that the state auditor shall conduct an in-depth investigation of the stadium authority (AGS 889) with respect to procurement and expenditure practices of the agency for fiscal biennium 2007-2009, and any impacts of its fiscal and management practices for fiscal biennium 2007-2009 upon subsequent fiscal years; and provided further that the state auditor submit a report of its investigation, findings and recommendations no later than 20 days prior to the convening of the 2010 regular session.

SECTION 137. Provided that the state auditor conduct a financial and management audit of the department of public safety, sheriff division (PSD 503), and report on the suitability of the administrative organization of the department of public safety and sheriff division; provided further that the financial and management audit of PSD include or address the following:

- (1) Total amount of funds requested by PSD to advance its mission and goals, and the percentage of such funds allocated to the sheriff division;
- (2) Issues relating to the PSD's strategic and financial plan, its budgeting process, and its process of forecasting financial needs;
- (3) Any and all other matters that the Auditor would normally undertake as necessary or appropriate in a system-wide financial audit;
- (4) How priorities for expenditures within PSD are determined;
- (5) What responsibilities of the sheriff division are not adequately achieved due to insufficient resources;
- (6) The adequacy of the method by which the amount of pay provided to officers in the sheriff division is calculated;
- (7) Any disparities in pay between the officers in the sheriff division and other law enforcement officers, particularly county police officers, in the state, being mindful of the amount of training and responsibilities involved in each area of law enforcement area; and
- (8) An examination and evaluation of alternative administrative structures for law enforcement and corrections functions, including but not limited to:
  - (A) Creation of a new executive department for the sheriff division;
  - (B) Placement of the sheriff division in a different executive department; and
  - (C) Functional separation of the corrections division and sheriff division within PSD, with different heads, budgets, and support staff;

provided further that PSD, its staff, and other relevant persons or agencies are requested to cooperate with and assist the state auditor, and to provide information requested by the Auditor; and provided further that the state auditor submit the report of its findings and recommendations, including any proposed legislation, at least 20 days before the convening of the 2010 regular session.

SECTION 138. Provided that in releasing funds for operating program appropriations, the governor shall consider legislative intent and the objectives of the user agency and its programs; the scope and level of the user agency's intended service; and the means, efficiency, and economics by which the appropriation will meet the objectives of the user agency and the State; and provided further that agencies responsible shall take into consideration legislative intent, the objectives of the user agency and its programs, and the scope and level of the user agency's intended service, and expend funds to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 139. Provided that no position funded by federal funds shall be allocated or assigned to any program other than the program for which the federal funds are appropriated, except for positions funded with federal moneys from the American Recovery and Reinvestment Act (ARRA) of 2009.

SECTION 140. Provided that of the federal fund appropriation for the department of human services, there are appropriated current year and carry-

over federal Temporary Assistance for Needy Families (TANF) funds, in the sum of \$154,626,065 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$128,990,000 or so much thereof as may be necessary for fiscal year 2010-2011; provided further that these sums shall be expended for the implementation of the TANF program, its associated programs, and transfers to other programs; and provided further that any provision to expend funds from the current year or carry-over federal TANF funds shall be construed to be a portion of, and not in addition to, the sums indicated in this section.

SECTION 141. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$9,500,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for the costs of administering the TANF program.

SECTION 142. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$44,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$37,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, and for associated eligibility determination costs. This appropriation shall first be charged or debited to the TANF Federal Reserve Fund, and then second to the TANF Federal Block Grant, as needed.

SECTION 143. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$13,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$11,800,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended to obtain work program contracts for TANF and TAONF recipients.

SECTION 144. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$13,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$11,600,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended to provide support services for TANF and TAONF recipients.

SECTION 145. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$12,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$10,500,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families.

SECTION 146. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$2,400,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for the uniting peer learning integrating new knowledge (UPLINK) program during after-school hours.

SECTION 147. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for after school hours programs for children and youth enrolled in school; provided further that the department shall follow the intent of Act 281, Session Laws of Hawaii 2006.

SECTION 148. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$3,200,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for enhanced healthy start programs.

SECTION 149. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$7,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$6,200,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for purchase of service contracts for child protective services.

SECTION 150. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$19,800,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$17,200,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be transferred to the child care development fund.

SECTION 151. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$9,890,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 that shall be transferred to the social services block grant.

SECTION 152. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for information systems costs related to the TANF program.

SECTION 153. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$5,400,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended for the costs of administering the TANF emergency assistance program for non-IV-E foster children.

SECTION 154. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$3,500,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$900,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be expended to provide assistance to needy families so that non-IV-E children may be cared for in their own homes or in homes of relatives and for associated eligibility determination costs; and provided further that

this sum shall first be charged or debited to the TANF Federal Reserve Fund, then to the TANF Federal Block Grant, as needed.

SECTION 155. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of the \$1,500,000 or so much thereof as may be necessary for fiscal year 2009-2010 that shall be expended for healthy start programs.

SECTION 156. Provided that the department of human services shall prepare a report that shall include, but not be limited to, a detailed financial plan for federal TANF funds that shall encompass the prior two fiscal years, the current fiscal year, and the next four fiscal years; provided further that this plan shall include anticipated expenditures by type and fiscal years, and the balance of funding in the federal TANF reserve fund for each of the fiscal years in the report; and provided further that the department shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 157. Provided that the governor may allow for an increase in the federal temporary assistance for needy families fund authorization ceiling for the program to accommodate the expenditure of such funds to the extent allowed in sections 141-155 of this act; provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 158. Provided that the department of human services shall prepare a report on the TANF program that shall include:

- (1) Its outcomes and measures of effectiveness with regards to the TANF program;
- (2) Work participation rates for two-parent families and all families included in calculation of the federal work participation rate; and
- (3) A listing of contracts funded by the TANF program and how these contracts will help the State's TANF program fulfill federal requirements;

provided further that the department shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 159. Provided that the department of human services shall prepare a report on the TANF program that shall include by program I.D. the amounts and descriptions of use of all TANF funds budgeted for the current fiscal year and the subsequent fiscal year; provided further that the report shall also include by program I.D. the amounts and descriptions of use of all general funds that may be used to meet maintenance of effort requirements for TANF funds budgeted for the current fiscal year and the subsequent fiscal year; and provided further that the department shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$3,636,065 or so much thereof as may be necessary for fiscal year 2009-2010 to be expended to achieve the following TANF purposes:

- (1) \$300,000 for multicultural language arts program services for 3<sup>rd</sup> and 4<sup>th</sup> grade underachieving, low-income minority students in Hawaii county;
- (2) \$250,000 for after-school programs for economically disadvantaged families at Kapaa middle School, Chiefess Kamakahalei Middle School, and Waimea Canyon Middle School;
- (3) \$200,000 to help reduce and eliminate substance abuse, gang-related activities, and family dysfunction among high-risk youth on Oahu by providing therapeutic prevention and mental health programs;
- (4) \$131,500 to help youth develop successful life skills by using drama education to teach and model active communication skills and support students' positive risk-taking at Farrington High School, Kalaakua Middle School, and Dole Middle School;
- (5) \$300,000 to expand facilities to develop family-centered, community-driven service delivery models designed to protect at-risk youth in Waimanalo, Central Kalihi, Kona, Puna, Waianae, Wailuku, and on Kauai;
- (6) \$198,000 to expand awareness and access to the federal earned income tax credit for low-income families in Honolulu county;
- (7) \$282,000 to assist individuals affected by domestic abuse to obtain temporary restraining orders in Honolulu county;
- (8) \$250,000 to provide operational funding to continue programs for underserved youth and families to promote successful transitions and positive, life-long learning experiences in Honolulu county;
- (9) \$200,000 to increase awareness of the importance of reading aloud to underserved youth and families to promote successful transitions and positive, life-long learning experiences in Honolulu county;
- (10) \$320,000 to continue support programs and services for sexually abused youth in Honolulu county;
- (11) \$250,000 to provide spouse abuse shelter services in Windward Oahu;
- (12) \$700,000 to provide legal services to poor and low income families;
- (13) \$254,565 to provide crisis intervention, case management, and services to child victims of interfamilial sexual abuse and their families.

SECTION 160. Provided that the University of Hawaii shall prepare a report on amounts budgeted for personnel costs that shall include, but not be limited to, the following:

- (1) A detailed account on the use of amounts budgeted for vacant positions or budgeted for and not expended for personnel costs for the previous fiscal year and current fiscal year to date; and
- (2) The planned expenditure of these amounts for the current and subsequent fiscal year;

provided further that the university shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.

SECTION 161. Provided that the department of public safety shall prepare a report on overtime costs that shall include the following:

- (1) Amount budgeted for overtime by program I.D.;
- (2) Amount expended on overtime by program I.D.;
- (3) Explanation of the department's plans to better reflect the true cost of overtime by submitting requests to the legislature to transfer



funds currently being used for overtime from where the funds are budgeted to the overtime cost category; and

- (4) Strategies the department will use to reduce such expenditures in the future;

provided further that the report shall include actual expenditures on overtime from fiscal year 2003-2004 to fiscal year 2008-2009; provided further that the report shall include to-date and projected expenditures on overtime for fiscal year 2009-2010 to fiscal year 2014-2015; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 regular session.

**SECTION 162.** Provided that for the use of Federal Stabilization funds the Department of Education and the University of Hawaii shall not be required to pay fringe benefit costs to the Department of Budget and Finance.

**SECTION 163.** Provided that the following general fund amounts reduced from the budget for fiscal biennium 2009-2011 shall be considered non-recurring reductions:

<u>Program ID</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>
EDN100	\$43,000,000	\$43,000,000
EDN600	\$2,000,000	\$2,000,000
UOH100	14,740,000	14,740,000
UOH800	\$660,000	\$660,000;

provided further that in the development of the fiscal biennium 2011-2013 executive branch budget, the governor shall restore these amounts to the base budget in the executive branch fiscal biennium 2011-2013 budget request; and provided further that this proviso shall in no way prohibit the governor from requesting reductions to these programs' base budget in its fiscal biennium 2011-2013 budget request.

**SECTION 164.** Provided that any savings or unrequired balances arising as a result of labor cost reductions pursuant to a collective bargaining agreement from appropriated general funds shall lapse to the general fund.

## **PART VIII. MISCELLANEOUS AND EFFECTIVE DATE**

**SECTION 165.** If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

**SECTION 166.** In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

**SECTION 167.** Material to be repealed is bracketed and stricken. New material in prior enacted laws is underscored.

**SECTION 168.** This Act shall take effect on July 1, 2009.

(Approved June 29, 2009.)

### **Notes**

1. So in original.
2. Period should not be underscored.
3. Act 64.

## A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in article VII, section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under article VII, section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2008-2009 and estimated for each fiscal year from 2009-2010 to 2012-2013, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2005-2006	\$4,904,019,330	
2006-2007	5,122,620,268	
2007-2008	5,222,739,619	
2008-2009	4,938,449,000	\$ 940,378,385
2009-2010	4,955,871,000	942,501,548
2010-2011	5,183,014,000	932,218,677
2011-2012	5,448,451,000	929,768,930
2012-2013	(not applicable)	961,219,053

For fiscal years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2005-2006, 2006-2007, and 2007-2008 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2008, dated November 21, 2008. The net general fund revenues for fiscal years 2008-2009 to 2011-2012 are estimates, based on general fund revenue estimates made as of March 13, 2009, by the council on revenues, the body assigned by article VII, section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit.
  - (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of May 1, 2009, is as follows for fiscal year 2009-2010 to fiscal year 2015-2016:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2009-2010	\$547,514,586
2010-2011	535,125,820
2011-2012	514,381,984
2012-2013	519,067,954
2013-2014	473,857,632
2014-2015	453,412,417
2015-2016	372,288,179

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2016-2017 to fiscal year 2028-2029 when the final installment of \$8,857,050 shall be due and payable.

- (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$193,500,000 (including \$2,500,000 enacted in Act 233, Session Laws of Hawaii 2008, Relating to Important Agricultural Lands), all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the State Constitution.
- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties.
  - (A) As calculated from the state comptroller's bond fund report as of February 28, 2009, adjusted for:

- (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 2009);
  - (ii) Lapses as provided in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 2009);
  - (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in House Bill No. 300, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 2009); and
  - (iv) Lapses as provided in House Bill No. 300, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 2009);
- the total amount of authorized but unissued general obligation bonds is \$1,846,918,113. The total amount of general obligation bonds authorized in this Act is \$873,784,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$2,720,702,113.
- (B) As reported by the department of budget and finance, the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$193,500,000 (including \$2,500,000 enacted in Act 233, Session Laws of Hawaii 2008, Relating to Important Agricultural Lands), all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the State Constitution. The total amount of guaranty authorized by Act 233, Session Laws of Hawaii 2008 (Relating to Important Agricultural Lands) is \$2,500,000, and is herein validated. The total amount of guaranties previously authorized and validated by this Act is \$193,500,000.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013, the State proposed to issue \$424,000,000 in general obligation bonds during the remainder of second half of fiscal year 2008-2009, \$210,000,000 in general obligation bonds during the first half of fiscal year 2009-2010, \$210,000,000 in general obligation bonds during the second half of fiscal year 2009-2010, \$275,000,000 in general obligation bonds during the first half of fiscal year 2010-2011, \$275,000,000 in general obligation bonds during the second half of fiscal year 2010-2011, \$330,000,000 in general obligation bonds during the first half of fiscal year 2011-2012, \$340,000,000 in general obligation bonds during the second half of fiscal year 2011-2012, \$330,000,000 in general obligation bonds during the first half of fiscal year 2012-2013, and \$340,000,000 in general obligation bonds during the second half of fiscal year 2012-2013. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.

- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2008-2009 to 2011-2012 is \$2,064,000,000. An additional \$670,000,000 is proposed to be issued in fiscal year 2012-2013. The total amount of \$2,064,000,000 which is proposed to be issued through fiscal year 2011-2012 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$2,720,702,113 reported in paragraph (4), except for \$656,702,113. It is assumed that the appropriations to which an additional \$656,702,113 in bond issuance needs to be applied will have been encumbered as of June 30, 2012. The \$670,000,000 which is proposed to be issued in fiscal year 2012-2013 will be sufficient to meet the requirements of the June 30, 2012, encumbrances in the amount of \$656,702,113. The amount of assumed encumbrances as of June 30, 2012, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2012, and the amount of June 30, 2012 encumbrances versus the amount of bonds proposed to be issued in fiscal year 2012-2013, the legislature finds that in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.
- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.
  - (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
    - (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
    - (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 2.00 per cent for the ten years from fiscal year 2008-2009 to fiscal year 2017-2018. For the purpose of this declaration, the assumption is made that one per cent of each bond issue shall be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.
  - (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor may be

excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7); provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the State Constitution for the fiscal years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution</u>
2008-2009	\$4,993,599,012
2009-2010	5,159,324,540
2010-2011	5,370,455,000
2011-2012	5,678,190,000
2012-2013	5,608,595,000

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or shall have been established as heretofore provided, may be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the State Constitution shall become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate not to exceed 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
2 <sup>nd</sup> half FY 2008-2009 \$419,760,000	940,378,385	574,797,859 (2010-2011)
1 <sup>st</sup> half FY 2009-2010 \$207,900,000	942,501,548	581,034,859 (2010-2011)
2 <sup>nd</sup> half FY 2009-2010 \$207,900,000	942,501,548	592,511,421 (2012-2013)
1 <sup>st</sup> half FY 2010-2011 \$272,250,000	932,218,677	608,846,421 (2012-2013)
2 <sup>nd</sup> half FY 2010-2011 \$272,250,000	932,218,677	625,181,421 (2012-2013)
1 <sup>st</sup> half FY 2011-2012 \$326,700,000	929,768,930	634,982,421 (2012-2013)
2 <sup>nd</sup> half FY 2011-2012 \$336,600,000	929,768,930	645,080,421 (2012-2013)
1 <sup>st</sup> half FY 2012-2013 \$326,700,000	961,219,053	652,822,192 (2014-2015)
2 <sup>nd</sup> half FY 2012-2013 \$336,600,000	961,219,053	673,018,192 (2014-2015)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 2009) and House Bill No. 300, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 2009), passed by this regular session of 2009, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$873,784,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 29, 2009.)

Notes

1. Act 162.
2. Act 139.

ACT 164

S.B. NO. 659

A Bill for an Act Relating to State Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 36-2.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Not later than January 1, 2009, the department of budget and finance, in accordance with this section, shall establish, implement, and maintain a single searchable website, accessible by the public at no cost, that includes for each state award:

- (1) The name of the entity receiving the award;
- (2) The amount of the award;
- (3) Information on the award, including transaction type, funding agency, ~~[the North American Industry Classification System code,]~~ program source, and an award title descriptive of the purpose of each funding action;
- (4) The full address of the entity receiving the award and the primary location of performance under the award;
- (5) A unique identifier of the entity receiving the award and of the parent entity of the recipient, if the entity is owned by another entity; and
- (6) Any other relevant information specified by the department of budget and finance.

The website shall include data for fiscal year 2008 and each fiscal year thereafter.

The director of finance is authorized to designate one or more state agencies to participate in the development, establishment, maintenance, and support of the website[-]; provided that the department of accounting and general services, in collaboration with the department of budget and finance, is responsible for collecting and posting on the website, the information that is required by this subsection. In the initial designation, or in subsequent instructions and guidance, the director may specify the scope of the responsibilities of each agency.

State agencies shall comply with the instructions and guidance issued by the director of finance and shall provide appropriate assistance to the director



upon request, so as to assist the director in ensuring the existence and operation of the website.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved July 1, 2009.)

## ACT 165

H.B. NO. 1495

A Bill for an Act Relating to State Income Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the state is undergoing a significant and possibly protracted economic downturn in tandem with the national and global economic and financial crises. Numerous jobs have been lost, a number of large and small companies have declared bankruptcy or left the state, and many families have suffered foreclosure on their over-mortgaged houses. In the past year, the council on revenues has consistently reduced its forecasts of Hawaii’s tax revenues. Across-the-board spending restrictions have already been put in place in state government and a general hiring freeze has already been implemented except in areas that impact public health and safety.

In the face of these extraordinary conditions, the State cannot proceed with business as usual. All resources must be examined to address critical state-wide health, safety, and educational needs.

The legislature also finds that Hawaii is only one of two states in which gambling is not permitted. At the same time, Hawaii conforms to the relevant section of the Internal Revenue Code that allows, for the purposes of state income tax, the deduction of wagering losses against wagering income. Allowing this deduction for state income tax purposes, in effect, subsidizes the other forty-eight states that do allow gambling.

Accordingly, the purpose of this Act is to generate additional general funds to ensure the delivery of critical services statewide by repealing the deduction of wagering losses for the purposes of the Hawaii state income tax.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter[-], except that Section 165(d) (with respect to wagering losses) shall not be operative for the purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall apply to taxable years beginning after December 31, 2008.

(Approved July 1, 2009.)

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
TAX RETURN PREPARERS

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-A Understatement of taxpayer’s liability by tax return preparer. (a)**

A tax return preparer who understates a person’s tax liability based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$500 with respect to each such tax return or claim for tax refund.

(b) A tax return preparer who:

- (1) Wilfully understates a person’s tax liability; or
- (2) Recklessly disregards any tax law or rule in understating a person’s tax liability,

based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$1,000, with respect to each such tax return or claim for tax refund.

(c) For purposes of subsections (a) and (b), understatements of liability using unreasonable positions occur when:

- (1) Any part of a tax return or claim for tax refund is based on a position that does not have substantial authority;
- (2) The tax return preparer who prepared the tax return or claim for tax refund knew or reasonably should have known of the unreasonable position; and
- (3) The unreasonable position was not a disclosed item as defined in subsection (h) or was frivolous.

(d) If within thirty days after the notice and demand of any penalty under subsection (a) or (b) is made, the tax return preparer:

- (1) Pays an amount that is not less than fifteen per cent of the penalty amount; and
- (2) Files a claim for refund of the amount so paid,

no action to levy or file a proceeding in court to collect the remainder of the penalty shall be commenced except in accordance with subsection (e).

(e) An action that is stayed pursuant to subsection (d) may be brought thirty days after either of the following events, whichever occurs first:

- (1) The tax return preparer fails to file an appeal to the tax appeal court within thirty days after the day on which the claim for refund of any partial payment of any penalty under subsection (a) or (b) is denied; or
- (2) The tax return preparer fails to file an appeal to the tax appeal court for the determination of the tax return preparer’s liability for the penalty assessed under subsection (a) or (b) within six months after the day on which the claim for refund was filed.

Nothing in this subsection shall be construed to prohibit any counterclaim for the remainder of the penalty in any proceeding.

(f) If there is a final administrative determination pursuant to section 231-F, or a final judicial decision that the penalty assessed under subsection (a) or (b) should not apply, then that portion of the penalty assessed shall be voided.

Any portion of the penalty that has been paid shall be refunded to the tax return preparer as an overpayment of tax without regard to any period of limitations that, but for this subsection, would apply to the making of the refund.

(g) At the request of the director of taxation, a civil action may be brought to enjoin a tax return preparer from further acting as a tax return preparer or from engaging in conduct prohibited under subsection (a) or (b) as follows:

- (1) Any action under this subsection may be brought in the circuit court of the circuit in which the tax return preparer resides or has a principal place of business, or in which the taxpayer with respect to whose tax return the action is brought resides;
- (2) The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against the tax return preparer or taxpayer;
- (3) If the court finds that a tax return preparer has engaged in conduct subject to penalty under subsection (a) or (b) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the preparer accordingly; and
- (4) If the court finds that a tax return preparer has continually or repeatedly engaged in conduct prohibited under subsection (a) or (b) and that an injunction prohibiting that conduct would not be sufficient to prevent the preparer's interference with the proper administration of this chapter, the court may enjoin the preparer from acting as a tax return preparer.

(h) For purposes of this section:

"Disclosed item" means any item where:

- (1) The relevant facts affecting the item's tax treatment are adequately disclosed in a tax return or in a statement attached to a tax return; and
- (2) There is a reasonable basis for the tax treatment of the item by the taxpayer.

"Substantial authority" means, in addition to any definition of substantial authority incorporated by subsection (j), that the following authority supports the tax treatment of an item:

- (1) Statutory provisions;
- (2) Proposed or final administrative rules;
- (3) Tax information releases or procedures;
- (4) Department of taxation announcements or official explanations;
- (5) Court cases;
- (6) Legislative intent reflected in committee reports and floor statements;
- (7) Private letter rulings, comfort letters, technical or advice letters, and written determinations to the extent they are valid and not overruled by other authority; or
- (8) Notices or other official pronouncements of the department of taxation.

"Tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed under title 14 or any claim for refund of tax imposed under title 14. For purposes of this definition, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund.

A person shall not be a tax return preparer merely because the person:

- (1) Furnishes typing, reproducing, or other mechanical assistance;

- (2) Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom the person is regularly and continuously employed;
- (3) Prepares as a fiduciary a return or claim for refund for any other person; or
- (4) Prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to the taxpayer or in response to any waiver of restriction after the commencement of an audit of the taxpayer, or of another taxpayer if a determination in the audit of the other taxpayer directly or indirectly affects the tax liability of the taxpayer.

“Understatement of liability” shall have the same meaning as stated in section 231-D(b). The determination of whether there is an understatement of liability may be made without regard to any administrative or judicial action involving the taxpayer.

(i) The penalty imposed by this section shall be in addition to any other penalty provided by law.

(j) This section shall be construed in accordance with regulations and judicial interpretations for Section 6694 of the Internal Revenue Code.”

## PART II FRAUDULENT TAX PRACTICES

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-B Promoting abusive tax shelters.** (a) A person promotes an abusive tax shelter by:

- (1) Organizing or assisting in the organization of, or participating directly or indirectly in the sale of, an interest in:
  - (A) A partnership or other entity;
  - (B) Any investment plan or arrangement; or
  - (C) Any other plan or arrangement; and
- (2) In connection with any activity described under paragraph (1), making, furnishing, or causing another person to make or furnish a statement with respect to:
  - (A) Whether any deduction or credit is allowed;
  - (B) Whether any income may be excluded; or
  - (C) The securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement,

which the person knows or has reason to know is false or fraudulent or is a gross valuation overstatement as to any material matter.

(b) A person found promoting an abusive tax shelter shall pay, with respect to each activity described in subsection (a), a penalty of \$1,000 or, if the person establishes that the abusive tax shelter generated less than \$1,000 of gross income, then one hundred per cent of the gross income derived or to be derived by the person from the activity. For purposes of this section, any activity described in subsection (a)(1) shall be treated as a separate activity for each entity or arrangement. Participation in each sale described in subsection (a)(1) shall be treated as a separate activity for each entity or arrangement.

(c) At the request of the director of taxation, a civil action may be brought to enjoin any person described in subsection (a) from engaging in any conduct described in subsection (a). Any action under this section shall be brought in the circuit court of the circuit where the person in subsection (a) re-

sides or where the person's principal place of business is located. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against those persons described in subsection (a). If the court finds that a person described in subsection (a) has engaged in any conduct subject to penalty under subsection (b) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the person accordingly.

(d) The director may waive all or any part of the penalty provided by subsection (b) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that the valuation was made in good faith.

(e) For purposes of this section, "gross valuation overstatement" means any statement of value for any property or services if:

- (1) The value so stated exceeds two hundred per cent of the amount determined to be the correct valuation; and
- (2) The value of the property or services is directly related to the amount of any deduction or credit allowable to any participant.

(f) The penalty imposed by this section shall be in addition to any other penalty provided by law.

(g) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6700 of the Internal Revenue Code."

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-C Erroneous claim for refund or credit.** (a) If a claim for refund or credit with respect to tax is made for an excessive amount, the person making the claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount; provided that there shall be no penalty assessed where the penalty calculation under this section results in an amount of less than \$400.

(b) It shall be a defense to the penalty under this section that the claim for refund or credit had a reasonable basis. A person claiming the reasonable basis defense shall have the burden of proof to demonstrate the reasonableness of the claim.

(c) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6676 of the Internal Revenue Code.

(d) For purposes of this section:

"Excessive amount" means the amount by which the amount of the claim for refund or credit for any taxable year exceeds the amount of the claim allowable for such taxable year.

"Reasonable basis" means a standard of care used in tax reporting that is significantly higher than not frivolous or not patently improper. A reasonable basis position will be more than arguable and based on at least one or more authorities of either state or federal tax administration. A position is considered to have a reasonable basis if a reasonable and well-informed analysis by a person knowledgeable in tax law would lead that person to conclude that the position has approximately a one-in-four, or greater, likelihood of being sustained on the merits. A reasonable basis includes innocent mistakes where the excessive amount is the result of inadvertence, mathematical error, or where otherwise defined as innocent by the director pursuant to a formal pronouncement issued without regard to chapter 91."

SECTION 4. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-D Substantial understatements or misstatements of amounts; penalty.** (a) There shall be added to the tax an amount equal to twenty per cent of the portion of any underpayment that is attributable to any substantial understatement of any tax in a taxable year. The penalty under this section shall be in addition to any other penalty assessable by law.

(b) Except as provided under subsection (c), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

(1) Ten per cent of the tax required to be shown on the return for the taxable year; or

(2) \$1,500.

(c) In the case of a corporation other than a corporation taxable under subchapter S of the Internal Revenue Code, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

(1) Ten per cent of the tax required to be shown on the return for the taxable year; or

(2) \$30,000.

(d) The amount of any understatement shall be reduced by that portion of the understatement that is attributable to:

(1) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or

(2) Any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis, as defined under section 231-C, for the tax treatment by the taxpayer.

The reduction in this subsection shall not apply to any item attributable to a tax shelter as described in section 231-B.

(e) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6662 of the Internal Revenue Code.

(f) For purposes of this section, “understatement” means the excess of:

(1) The amount of tax required to be shown on the return for the taxable year; over

(2) The amount of tax imposed that is shown on the return, reduced by any rebate as that term is defined by Section 6211(b)(2) of the Internal Revenue Code.”

SECTION 5. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-E Statute of limitations; extension for substantial omissions.** (a) Notwithstanding any other law to the contrary limiting the time for assessment of any tax, if a taxpayer omits an amount of:

(1) Gross income or gross proceeds of sale;

(2) Gross rental or gross rental proceeds;

(3) Price, value, or consideration paid or received for any property;

(4) Gross receipts; or

(5) Gallonage, tonnage, cigarette count, day, or other weight or measure applicable to any tax,

properly includable therein that is in excess of twenty-five per cent of the amount stated in the return, the tax may be assessed or a proceeding in court with respect to the tax without assessment may be begun without assessment, at any time within six years after the return was filed.

(b) In determining any amount omitted, there shall not be taken into account any amount that is stated in the return if such amount is disclosed in the return or in a statement attached to the return in a manner adequate to apprise the department of taxation of the nature and amount of such item.

(c) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6501 of the Internal Revenue Code.”

SECTION 6. Section 235-111, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the return for the taxable year, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.”

2. By amending subsection (c) to read:

“(c) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that ~~in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court for or in the circuit within which the taxpayer or employer has the taxpayer's or employer's residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in the proceedings. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.]~~ the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 7. Section 237-40, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) General rule. The amount of excise taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the<sup>1</sup> return, whichever is later, and no proceeding in court without assessment for the collection of any [such] of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(b) Exceptions. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; ~~[however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the tax imposed by this chapter.]~~ provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 8. Section 237D-9, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any [such] of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;



- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
  - (3) An offer in compromise under section 231-3(10) is pending; and
  - (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.
- (d) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; [however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the tax imposed by this chapter.] provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state."

SECTION 9. Section 238-7, Hawaii Revised Statutes, is amended to read as follows:

**"§238-7 Audits; additional assessments; refunds.** (a) Sections 237-36 to 237-40 of the general excise tax law are hereby made applicable to the taxes imposed by this chapter, to the refunding of overpayments thereof, and to assessments, investigations, and audits in connection therewith, for which purpose any references therein to "gross income" or "gross proceeds of sale" shall be deemed to refer to the purchase price or value, as the case may be, subject to tax under this chapter, and any references to the "annual return" shall, if the taxpayer is not required to file an annual return under this chapter, be deemed to refer to the monthly return mentioned in the first paragraph of section 238-5.

(b) Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months."

SECTION 10. Section 243-14, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the ~~[three-year]~~ three-year period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at any time; provided that ~~[in the case of a statement claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(c) which shall apply to the tax imposed by this chapter.]~~ the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 11. Section 247-6.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§247-6.5] Limitation period for assessment, levy, collection, or credit.** The amount of conveyance taxes imposed by this chapter shall be assessed or levied, and the overpayment, if any, shall be credited within three years after filing of the certificate prescribed by section 247-6. No proceeding in court without assessment for the collection of the taxes shall be begun after the expiration of the ~~[three-year]~~ three-year period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

In the case of a false or fraudulent certificate filed with the intent to evade tax, or of a failure to file a certificate, the tax may be assessed or levied at any time."

SECTION 12. Section 251-8, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) Except as otherwise provided by this section, the amount of surcharge taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such surcharge taxes shall begin after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; [however, in the case of a return claimed to be false or fraudulent with intent to evade the surcharge tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the surcharge tax imposed by this chapter.] provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state."

SECTION 13. Section 346E-6, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(d) In the case of a false or fraudulent return with intent to evade tax, or a failure to file the annual return, the tax may be assessed or levied at any time[-]; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.”

SECTION 14. Section 431:7-204.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The amount of insurance taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any [~~such~~] taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and

- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

In the case of a false or fraudulent return with intent to evade the insurance taxes, or of a failure to file the annual return, the insurance taxes may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State."

### PART III TAX ADMINISTRATION

SECTION 15. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-F Expedited appeals and dispute resolution program.** (a) The department shall be authorized to implement an administrative appeals and dispute resolution program that shall expeditiously resolve all tax, penalty, interest, fine, assessment, and other such disputes between the department and the taxpayer or return preparer. The director or the director's designee, who shall report directly and be answerable solely to the director, shall serve as an independent appeals officer and shall be authorized to compromise, settle, or otherwise resolve any dispute on any basis, including hazards and costs of litigation, considering equally the position of the taxpayer and the department on an impartial basis. The independent appeals officer shall not be influenced by any department tax compliance initiatives and policies, or loss of revenue to the State. Decisions of the independent appeals officer shall be in writing stating the facts, analysis, and conclusions in support, which shall be provided to the taxpayer and return preparer. Persons who currently serve or have served in the previous five years as an auditor, audit supervisor or manager, collector, collection supervisor or manager, district manager or supervisor, or tax compliance administrator, shall not be eligible to be the director's designee.

(b) Notwithstanding any other law to the contrary, including tax appeal procedures set forth under chapter 232, a taxpayer shall be eligible to petition the department once for participation in the administrative appeals and dispute resolution program after issuance of a notice of proposed assessment; provided that if a taxpayer has filed a tax appeal with the tax appeal court or other court, the taxpayer shall first be required to obtain the approval of the director and permission from the respective court prior to petitioning the department for participation. The director shall have the right to deny a petition for cause.

(c) The department shall adopt procedures to carry out the purposes of this section, including procedures relating to ex parte communications between the director or the director's designee and other department personnel to ensure that such communications do not compromise or appear to compromise the independence of the administrative appeals and dispute resolution program."

SECTION 16. Chapter 231, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

**"§231-G Rules or administrative guidance.** Rules, including temporary rules, providing examples and safe harbors shall be implemented to explain in clear and unambiguous terms the penalties and fines provided under any provi-

sion of title 14 that may be imposed against a return preparer or taxpayer for understatement of tax liabilities, promotion of abusive tax shelters, erroneous claims for refund or credit, or substantial understatements or misstatements of tax. Federal laws and administrative guidance may be used to interpret this section. Any such penalties or fines shall first be approved by the director before assessment.

**§231-H Disclosure of letter rulings, et al.** Notwithstanding any law to the contrary, any and all advice given or communications made by the department, including but not limited to letter rulings and determination letters, containing tax advice, shall be disclosed to the public under standards and procedures under Section 6110 of the federal Internal Revenue Code of 1986, as amended, the regulations thereunder, and federal court interpretations.

**§231-I Closing audit letters.** At the conclusion of a tax audit, the department shall provide to the taxpayer a closing audit letter that shall confirm in writing the department's position on each issue considered in the audit, and which shall provide guidance on how the taxpayer may report such issues for post audit years.

**§231-J Signature presumed authentic.** The fact that an individual's name is signed on a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by the individual.

**§231-K Temporary rulemaking authority for regulation of tax matters.** (a) Notwithstanding any other law in title 14, chapter 91, or chapter 201M to the contrary, the department is authorized to adopt any temporary rules as the department may deem proper as provided in this section. Temporary rules may include the adoption, amendment, or repeal of any rules concerning any matters which the department is authorized to regulate.

(b) Temporary rules shall take effect seven days after notice of the temporary rules is issued. Notice under this subsection shall require:

- (1) Making the temporary rules available on the department's and the lieutenant governor's websites;
  - (2) Making copies of the temporary rules available to the public for inspection at the department's offices or copying if any required fee is paid; and
  - (3) Providing public notice of the substance of the temporary rules at least once statewide.
- (c) Temporary rules shall be approved by the governor.

(d) Any temporary rules issued by the department shall also be issued as proposed administrative rules that shall be subject to the procedural requirements of chapter 91.

(e) Temporary rules shall expire eighteen months from the date the temporary rules take effect.

(f) Temporary rules shall conspicuously provide the following information at the beginning of the temporary rules' text:

- (1) Notice stating the temporary nature of the rules;
- (2) The expiration date of the temporary rules; and
- (3) A statement advising that proposed administrative rules subject to chapter 91 are being simultaneously proposed for formal adoption.

(g) Temporary rules shall have the same force and effect as any other administrative rules."

SECTION 17. Section 231-7, Hawaii Revised Statutes, is amended to read as follows:

**“§231-7 Hearings and subpoenas.** (a) The director of taxation, and any representative of the director duly authorized by the director, may conduct any inquiry, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any inquiry or investigation into the financial resources of any delinquent taxpayer or the ~~[collect-~~  
~~ibility]~~ collectability of any delinquent tax.

(b) The director or other person conducting ~~[such hearing]~~ hearings may administer oaths and take testimony under oath relating to the matter of inquiry or investigation, and subpoena witnesses and require the production of books, papers, documents, and records pertinent to such inquiry.

(c) If any person disobeys ~~[such process,]~~ any process or, having appeared in obedience thereto, refuses to answer pertinent questions put to the person by the director or other person conducting ~~[such]~~ the hearing, or to produce any books, papers, documents, or records pursuant thereto, the director or other person conducting ~~[such]~~ the hearing may apply to the circuit court of the circuit wherein the inquiry or investigation is being conducted, or to any judge of ~~[such]~~ the court, setting forth ~~[such]~~ the disobedience to process or refusal to answer, and ~~[such]~~ the court or judge shall cite ~~[such]~~ the person to appear before ~~[such]~~ the court or judge to answer ~~[such]~~ the questions or to produce ~~[such]~~ the books, papers, documents, or records, and upon the person's refusal so to do commit ~~[such]~~ the person to jail until the person testifies but not for a longer period than sixty days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's or its officers, directors, agents, and employees) shall be allowed their fees and mileage as in cases in the circuit courts, to be paid on vouchers of the department of taxation, from any moneys available for expenses of the department.

(d) Any subpoena issued under this section that does not identify the person with respect to whose liability or investigation the subpoena is issued may be served on any person only after a court proceeding in which the director or another person establishes that:

- (1) The subpoena relates to the investigation of a particular person or ascertainable group or class of persons;
- (2) There is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of title 14; and
- (3) The information sought to be obtained from the examination of records or testimony and the identity of the person or persons with respect to whose liability the subpoena is issued is not readily available from other sources.

(e) The provisions of this section are in addition to all other provisions of law, and apply to any tax within the jurisdiction of the department.”

SECTION 18. Section 232-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each board shall hold public meetings at some central location in its taxation district, commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. A taxpayer's identity and final documents submitted in support or opposition of an appeal shall be public information; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer's social security number from any ac-

companying tax return. Each board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer in the notice of appeal; provided that no board shall have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the assessor and to increase or lower any assessment.”

SECTION 19. Section 232-16, Hawaii Revised Statutes, is amended to read as follows:

**“§232-16 Appeal to tax appeal court.** A taxpayer or county, in all cases, may appeal directly to the tax appeal court without appealing to a state board of review, or any equivalent administrative body established by county ordinance. An appeal to the tax appeal court is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. An appealing taxpayer shall also pay the costs in the amount fixed by section 232-22.

The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer’s return, if any has been filed[-]; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer’s social security number from any accompanying tax return.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, the director of taxation, or the real property assessment division of the county involved, and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal.”

SECTION 20. Section 232-18, Hawaii Revised Statutes, is amended to read as follows:

**“§232-18 Certificate of appeal to tax appeal court.** Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.



The certificate shall be accompanied by the taxpayer's return, if any has been filed[-]; provided that the department of taxation is authorized to redact all but the last four digits of an individual taxpayer's social security number from an accompanying tax return, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer's, county's, or assessor's appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal."

#### PART IV CRIMINAL TAX ENFORCEMENT

SECTION 21. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-L Wilful failure to collect and pay over tax.** Any person required to collect, account for, and pay over any tax imposed by title 14, who wilfully fails to collect or truthfully account for and pay over such tax shall be guilty of a class C felony, in addition to other penalties provided by law and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$100,000;
- (2) Imprisonment of not more than five years; or
- (3) Probation;

provided that a corporation shall be fined not more than \$500,000."

SECTION 22. Section 231-40, Hawaii Revised Statutes, is amended to read as follows:

**"[§231-40] Interpretation.** Sections 231-34, 231-35, [and] 231-36, and 231-F shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United States Code; consistent therewith, the term "wilfully" shall mean a voluntary, intentional violation of a known legal duty."

SECTION 23. Section 231-41, Hawaii Revised Statutes, is amended to read as follows:

**"[§231-41] Statute of limitation for criminal penalties.** Notwithstanding any laws to the contrary, prosecutions under sections 231-34, 231-35, [and] 231-36, and 231-F shall be commenced within seven years after the commission of the offense."

#### PART V MISCELLANEOUS

SECTION 24. Except as provided in section 27, this Act does not affect returns prepared and transactions promoted, rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. In codifying the new sections added by sections 1 through 5, section 15, section 16, and section 21, of this Act, the revisor of statutes shall

insert appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 26. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 27. This Act shall take effect on July 1, 2009; provided that section 1 (relating to penalties for preparing returns with unreasonable positions), section 3 (relating to erroneous refund or credit claims), section 4 (relating to substantial understatements), section 5 (relating to the statute of limitations on substantial omissions), section 6 (relating to fraud assessments), section 7 (relating to fraud assessments), section 8 (relating to fraud assessments), section 10 (relating to fraud assessments), and section 11 (relating to fraud assessments) shall apply to any return prepared, refund claim, understatement, omission, or fraud contained in any return where the statute of limitations on assessment has not expired; provided that this Act shall not apply to any return prepared, refund claim, understatement, omission, or fraud in any return where an amended return is filed by October 1, 2009, to the extent the amended return cures, corrects, or eliminates any item constituting an unreasonable position, erroneous refund claim, substantial understatement, substantial omission, or fraud as provided in this Act.

(Approved July 1, 2009.)

#### Notes

1. Prior to amendment "said" appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 167

S.B. NO. 1195

A Bill for an Act Relating to the Economy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 201-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall submit to the legislature no later than twenty days prior to the convening of each regular legislative session, a ~~[written performance report on the impact of activities of the department and attached agencies that demonstrate their efforts to support, promote, and facilitate the expansion and long-term viability of emerging growth industries including those identified in subsection (a)(1).]~~ report that provides an update on the criteria used to measure growth of these emerging growth industries. In updating its reports on growth of emerging industries each year, the department shall develop updated measurements and analyses in collaboration with the University of Hawaii, county economic development boards, and private, non-profit economic research activities."

SECTION 2. Section 226-6, Hawaii Revised Statutes, is amended to read as follows:

**“§226-6 Objectives and policies for the economy—in general.** (a) Planning for the State’s economy in general shall be directed toward achievement of the following objectives:

- (1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii’s people[-], while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.
- (2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

(b) To achieve the general economic objectives, it shall be the policy of this State to:

- (1) Expand Hawaii’s national and international marketing, communication, and organizational ties, to increase the State’s capacity to adjust to and capitalize upon economic changes and opportunities occurring outside the State.
- (2) Promote Hawaii as an attractive market for environmentally and socially sound investment activities that benefit Hawaii’s people.
- (3) Seek broader outlets for new or expanded Hawaii business investments.
- (4) Expand existing markets and penetrate new markets for Hawaii’s products and services.
- (5) Assure that the basic economic needs of Hawaii’s people are maintained in the event of disruptions in overseas transportation.
- (6) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.
- (7) Encourage the formation of cooperatives and other favorable marketing arrangements at the local or regional level to assist Hawaii’s small scale producers, manufacturers, and distributors.
- (8) Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.
- (9) Foster greater cooperation and coordination between the government and private sectors in developing Hawaii’s employment and economic growth opportunities.
- (10) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.
- (11) Maintain acceptable working conditions and standards for Hawaii’s workers.
- (12) Provide equal employment opportunities for all segments of Hawaii’s population through affirmative action and nondiscrimination measures.
- (13) Stimulate the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.
- [(+13)] (14) Encourage businesses that have favorable financial multiplier effects within Hawaii’s economy[-], particularly with respect to emerging industries in science and technology.

- [14] (15) Promote and protect intangible resources in Hawaii, such as scenic beauty and the aloha spirit, which are vital to a healthy economy.
- [15] (16) Increase effective communication between the educational community and the private sector to develop relevant curricula and training programs to meet future employment needs in general, and requirements of new, potential growth industries in particular.
- [16] (17) Foster a business climate in Hawaii—including attitudes, tax and regulatory policies, and financial and technical assistance programs—that is conducive to the expansion of existing enterprises and the creation and attraction of new business and industry.”

SECTION 3. Section 226-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the agriculture objectives, it shall be the policy of this State to:

- (1) Establish a clear direction for Hawaii’s agriculture through stakeholder commitment and advocacy.
- (2) Encourage agriculture by making best use of natural resources.
- (3) Provide the governor and the legislature with information and options needed for prudent decision making for the development of agriculture.
- (4) Establish strong relationships between the agricultural and visitor industries for mutual marketing benefits.
- (5) Foster increased public awareness and understanding of the contributions and benefits of agriculture as a major sector of Hawaii’s economy.
- (6) Seek the enactment and retention of federal and state legislation that benefits Hawaii’s agricultural industries.
- (7) Strengthen diversified agriculture by developing an effective promotion, marketing, and distribution system between Hawaii’s producers and consumer markets locally, on the continental United States, and internationally.
- (8) Support research and development activities that ~~[provide greater efficiency and]~~ strengthen economic productivity in agriculture~~[-]~~, stimulate greater efficiency, and enhance the development of new products and agricultural by-products.
- (9) Enhance agricultural growth by providing public incentives and encouraging private initiatives.
- (10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs.
- (11) Increase the attractiveness and opportunities for an agricultural education and livelihood.
- (12) Expand Hawaii’s agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.
- (13) Promote economically competitive activities that increase Hawaii’s agricultural self-sufficiency.
- (14) Promote and assist in the establishment of sound financial programs for diversified agriculture.
- (15) Institute and support programs and activities to assist the entry of displaced agricultural workers into alternative agricultural or other employment.

- (16) Facilitate the transition of agricultural lands in economically non-feasible agricultural production to economically viable agricultural uses.”

SECTION 4. Section 226-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the visitor industry objective, it shall be the policy of this State to:

- (1) Support and assist in the promotion of Hawaii’s visitor attractions and facilities.
- (2) Ensure that visitor industry activities are in keeping with the social, economic, and physical needs and aspirations of Hawaii’s people.
- (3) Improve the quality of existing visitor destination areas[-] by utilizing Hawaii’s strengths in science and technology.
- (4) Encourage cooperation and coordination between the government and private sectors in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities.
- (5) Develop the industry in a manner that will continue to provide new job opportunities and steady employment for Hawaii’s people.
- (6) Provide opportunities for Hawaii’s people to obtain job training and education that will allow for upward mobility within the visitor industry.
- (7) Foster a recognition of the contribution of the visitor industry to Hawaii’s economy and the need to perpetuate the aloha spirit.
- (8) Foster an understanding by visitors of the aloha spirit and of the unique and sensitive character of Hawaii’s cultures and values.”

SECTION 5. Section 226-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the federal expenditures objective, it shall be the policy of this State to:

- (1) Encourage the sustained flow of federal expenditures in Hawaii that generates long-term government civilian employment;
- (2) Promote Hawaii’s supportive role in national defense, ~~[while remaining]~~ in a manner consistent with Hawaii’s social, environmental, and cultural goals[;] by building upon dual-use and defense applications to develop thriving ocean engineering, aerospace research and development, and related dual-use technology sectors in Hawaii’s economy;
- (3) Promote the development of federally supported activities in Hawaii that respect statewide economic concerns, are sensitive to community needs, and minimize adverse impacts on Hawaii’s environment;
- (4) Increase opportunities for entry and advancement of Hawaii’s people into federal government service;
- (5) Promote federal use of local commodities, services, and facilities available in Hawaii;
- (6) Strengthen federal-state-county communication and coordination in all federal activities that affect Hawaii; and
- (7) Pursue the return of federally controlled lands in Hawaii that are not required for either the defense of the nation or for other purposes of national importance, and promote the mutually beneficial exchanges of land between federal agencies, the State, and the counties.”

SECTION 6. Section 226-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the potential growth activity objective, it shall be the policy of this State to:

- (1) Facilitate investment and employment growth in economic activities that have the potential ~~[for growth such as]~~ to expand and diversify Hawaii’s economy, including but not limited to diversified agriculture, aquaculture, [apparel and textile manufacturing, film and television production, and energy and marine-related industries.] renewable energy development, creative media, and science and technology-based sectors.
- (2) Expand Hawaii’s capacity to attract and service international programs and activities that generate employment for Hawaii’s people.
- (3) Enhance and promote Hawaii’s role as a center for international relations, trade, finance, services, technology, education, culture, and the arts.
- (4) Accelerate research and development of new energy- related industries based on wind, solar, ocean, and underground resources and solid waste.
- (5) Promote Hawaii’s geographic, environmental, social, and technological advantages to attract new economic activities into the State.
- (6) Provide public incentives and encourage private initiative to attract new industries that best support Hawaii’s social, economic, physical, and environmental objectives.
- (7) Increase research and the development of ocean-related economic activities such as mining, food production, and scientific research.
- (8) Develop, promote, and support research and educational and training programs that will enhance Hawaii’s ability to attract and develop economic activities of benefit to Hawaii.
- (9) Foster a broader public recognition and understanding of the potential benefits of new, growth-oriented industry in Hawaii.
- (10) Encourage the development and implementation of joint federal and state initiatives to attract federal programs and projects that will support Hawaii’s social, economic, physical, and environmental objectives.
- (11) Increase research and development of businesses and services in the telecommunications and information industries.”

SECTION 7. Section 226-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Planning for the State’s economy with regard to ~~[the information industry shall be directed toward the achievement of the objective of positioning Hawaii as the leading dealer in information businesses and services in the Pacific Rim.]~~ telecommunications and information technology shall be directed toward positioning Hawaii as a leader in broadband communications and applications in the Pacific Region.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved July 1, 2009.)

## ACT 168

S.B. NO. 166

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431:10A,<sup>1</sup> Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431:10A- Chemotherapy services.** (a) Notwithstanding section 23-51, all individual and group accident and health or sickness insurance policies that include coverage or benefits for the treatment of cancer shall provide payment or reimbursement for all chemotherapy that is considered medically necessary as defined in section 432E-1.4, including orally administered chemotherapy, at the same copayment percentage or relative coinsurance amount as is applied to intravenously administered chemotherapy; provided that this section shall not apply to an accident only, specified disease, hospital indemnity, long-term care, or other limited benefit health insurance policy.

(b) For the purposes of this section:

“Intravenously administered chemotherapy” means a physician-prescribed cancer treatment that is administered through injection directly into the patient’s circulatory system by a physician, physician assistant, nurse practitioner, nurse, or other medical personnel under the supervision of a physician and in a hospital, medical office, or other clinical setting.

“Oral chemotherapy” means a United States Food and Drug Administration-approved, physician-prescribed cancer treatment that is taken orally in the form of a tablet or capsule and may be administered in a hospital, medical office, or other clinical setting or may be delivered to the patient for self-administration under the direction or supervision of a physician outside of a hospital, medical office, or other clinical setting.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article I to be appropriately designated and to read as follows:

**“§432:1- Chemotherapy services.** (a) All individual and group hospital and medical service plan contracts that include coverage or benefits for the treatment of cancer shall provide payment or reimbursement for all chemotherapy that is considered medically necessary as defined in section 432E-1.4, including orally administered chemotherapy, at the same copayment percentage or relative coinsurance amount as is applied to intravenously administered chemotherapy; provided that this section shall not apply to an accident only, specified disease, hospital indemnity, long-term care, or other limited benefit health insurance policy.

(b) For the purposes of this section:

“Intravenously administered chemotherapy” means a physician-prescribed cancer treatment that is administered through injection directly into the patient’s circulatory system by a physician, physician assistant, nurse practitioner, nurse, or other medical personnel under the supervision of a physician and in a hospital, medical office, or other clinical setting.

“Oral chemotherapy” means a United States Food and Drug Administration-approved, physician-prescribed cancer treatment that is taken orally in the form of a tablet or capsule and may be administered in a hospital, medical office, or other clinical setting or may be delivered to the patient for self-administration

under the direction or supervision of a physician outside of a hospital, medical office, or other clinical setting.”

SECTION 3. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

**“§432D-23 Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, [and] 431:10A-121, 431:10A-, and chapter 431M.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 5. This Act shall take effect on January 1, 2010.

(Approved July 2, 2009.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 169

H.B. NO. 1378

A Bill for an Act Relating to Advanced Practice Registered Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is a need for more access to health care professionals, particularly in rural areas. Studies show that appropriately trained advanced practice registered nurses can provide high quality health care and achieve positive outcomes for patients. Advanced practice registered nurses are capable of providing primary health care and play an important role in meeting the growing demand for primary health care, particularly in underserved areas.

The legislature further finds that the disciplines of medicine and nursing and the roles of physicians and advanced practice registered nurses are complementary. Ultimately, the interests of patients are well served when advanced practice registered nurses are included as an essential component of the primary health care team.

The purpose of this Act is to recognize advanced practice registered nurses as participating primary health care providers for insurance coverage purposes, permit advanced practice registered nurses to sign documents relating to health care for their patients, clarify educational and other requirements for advanced practice registered nurses, and update the authority for advanced practice registered nurses to write prescriptions, including prescriptions for controlled substances, medical equipment, and therapeutic regimens, in accordance with their scope of practice.

SECTION 2. Chapter 431, article 10A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



**“§431:10A- Primary care provider; advanced practice registered nurse.**

(a) Each policy of accident and health or sickness insurance delivered or issued for delivery in this state shall recognize advanced practice registered nurses, as defined under section 457-8.5(a), as participating providers, and shall include coverage for care provided by participating advanced practice registered nurses practicing within the scope of their licenses for purposes of health maintenance, diagnosis, or treatment, to the extent that the policy provides benefits for identical services rendered by another health care provider.

(b) Notwithstanding any other law to the contrary, an insurer may recognize a participating advanced practice registered nurse as a primary care provider if the insured's policy requires the selection of a primary care provider. The insurer shall include participating advanced practice registered nurses who practice as primary care providers on any publicly available list of participating primary care providers; provided that the insurer retains the right to determine the contracting criteria for a participating primary care provider.

(c) For the purposes of this section, “participating advanced practice registered nurse” means an advanced practice registered nurse who has contracted with the insurer to provide health care services to its insureds.”

SECTION 3. Chapter 432, article 1, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§432:1- Primary care provider; advanced practice registered nurse. (a)**

Each policy of insurance delivered or issued for delivery in this state by a mutual benefit society shall recognize advanced practice registered nurses, as defined under section 457-8.5(a), as participating providers, and shall include coverage for care provided by participating advanced practice registered nurses practicing within the scope of their licenses for purposes of health maintenance, diagnosis, or treatment, to the extent that the policy provides benefits for identical services rendered by another health care provider.

(b) Notwithstanding any other law to the contrary, an insurer may recognize a participating advanced practice registered nurse as a primary care provider if the insured's policy requires the selection of a primary care provider. The insurer shall include participating advanced practice registered nurses who practice as primary care providers on any publicly available list of participating primary care providers; provided that the insurer retains the right to determine the contracting criteria for a participating primary care provider.

(c) For the purposes of this section, “participating advanced practice registered nurse” means an advanced practice registered nurse who has contracted with the insurer to provide health care services to its insureds.”

SECTION 4. Chapter 432, article 2, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§432:2- Primary care provider; advanced practice registered nurse. (a)**

Each policy of insurance delivered or issued for delivery in this state by a fraternal benefit society shall recognize advanced practice registered nurses, as defined under section 457-8.5(a), as participating providers, and shall include coverage for care provided by participating advanced practice registered nurses practicing within the scope of their licenses for purposes of health maintenance, diagnosis, or treatment, to the extent that the policy provides benefits for identical services rendered by another health care provider.

(b) Notwithstanding any other law to the contrary, an insurer may recognize a participating advanced practice registered nurse as a primary care pro-

vider if the insured's policy requires the selection of a primary care provider. The insurer shall include participating advanced practice registered nurses who practice as primary care providers on any publicly available list of participating primary care providers; provided that the insurer retains the right to determine the contracting criteria for a participating primary care provider.

(c) For the purposes of this section, "participating advanced practice registered nurse" means an advanced practice registered nurse who has contracted with the insurer to provide health care services to its insureds."

SECTION 5. Chapter 457, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§457- Global signature authority.** (a) Notwithstanding any other law to the contrary, advanced practice registered nurses shall be authorized to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients, including workers' compensation verification documents, verification and evaluation forms of the department of human services and department of education, verification and authorization forms of the department of health, and physical examination forms; provided that nothing in this section shall be construed to expand the scope of practice of advanced practice registered nurses.

(b) This section shall not apply to a certificate of disability that may be used to obtain parking privileges for disabled persons pursuant to part III of chapter 291."

SECTION 6. Section 329-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"Advanced practice registered nurse with prescriptive authority" means a person licensed under section 457-8.6 who is registered under this chapter to administer or prescribe a controlled substance."

2. By amending the definition of "practitioner" to read:

"Practitioner" means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed and registered under section 329-32 to distribute, dispense, or conduct research with respect to a controlled substance in the course of professional practice or research in this ~~[State; and]~~ state;
- (2) An advanced practice registered nurse with prescriptive authority licensed and registered under section 329-32 to prescribe and administer controlled substances in the course of professional practice in this state; and
- ~~(2)~~ (3) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this ~~[State;]~~ state."

SECTION 7. Section 329-121, Hawaii Revised Statutes, is amended by amending the definition of "physician" to read as follows:

"Physician" means a person who is licensed under [chapters 453 and 460;] chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include physician's assistant as described in section 453-5.3[;] or an advanced practice registered nurse with prescriptive authority as described in section 457-8.6."

SECTION 8. Section 423D-23,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**“§432D-23 Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the [State] state after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, [and] 431:10A-121, and 431:10A-, and chapter 431M.”

SECTION 9. Section 457-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“§457-8.5 Advanced practice registered nurse; qualifications; recognition; endorsement; fees; eligibility.** (a) ~~[The] Effective October 1, 2009, the board shall grant recognition as an advanced practice registered nurse[; provided the]~~ to a nurse who has:

- (1) A current, unencumbered license as a registered nurse in this [State;] state;
- (2) An unencumbered license as a registered nurse in all other states in which the nurse has a current and active license;
- (3) An unencumbered recognition as an advanced practice registered nurse or similar designation in all other states in which the nurse has a current and active recognition as an advanced practice registered nurse;
- ~~[(4) A master's degree in nursing as specified in rules adopted by the board or a current certification for specialized and advanced nursing practice from a national certifying body recognized by the board; provided that certified nurse midwives shall maintain current certification from a national certifying body recognized by the board; and~~
- ~~(5)]~~ (4) Completed an accredited graduate-level education program leading to a master's degree as a certified registered nurse anesthetist, a nurse midwife, a clinical nurse specialist, or a nurse practitioner;
- (5) A current, unencumbered certification of having passed a national certification examination that measures role and population-focused competencies and is recognized by the board;
- (6) Maintained continued competencies through recertification in role and population-focused competencies through a national certification program recognized by the board;
- (7) Acquired advanced clinical knowledge and skills preparing the nurse to provide direct care to patients through a significant educational and practical concentration on the direct care of patients;
- (8) Demonstrated a greater breadth of knowledge, a greater synthesis of data, greater complexity of skills and interventions, and greater role autonomy than demonstrated by a registered nurse;
- (9) Been educationally prepared to assume responsibility and accountability for health promotion and maintenance and to assess, diagnose, and manage patient problems through the use and prescription of pharmacologic and non-pharmacologic interventions;
- (10) Acquired clinical experience of sufficient depth and breadth to reflect the intended license; and
- (11) Paid the appropriate fees.

(b) ~~[The board shall require certified nurse midwives to meet the requirements of subsection (a) in order to obtain recognition and maintain recognition as advanced practice registered nurses.] Any person recognized as an advanced practice registered nurse prior to October 1, 2009, whose recognition was granted based on a master's degree in nursing or a current certification for specialized and advanced nursing practice from a national certifying body recognized by the board shall be eligible to renew that recognition; provided that all nurse licenses, recognitions, and prescriptive authorities or similar designations held by the person in any jurisdiction are unencumbered.~~

(c) Any person applying for advanced practice registered nurse recognition by endorsement shall be granted recognition as an advanced practice registered nurse; provided that:

- (1) The person applying is licensed as a registered nurse in this state; and
- (2) All nurse licenses, recognitions, and prescriptive authorities or similar designations held by the person under the laws of this state, another state, or a United States territory are unencumbered, and the originating state's requirements were equal to or greater than the board's advanced practice registered nurse requirements which were in effect prior to October 1, 2009.

An advanced practice registered nurse shall be eligible to renew the recognition granted under this subsection; provided that all nurse licenses, recognitions, and prescriptive authorities or similar designations held by the person in this state, another state, or a United States territory are unencumbered.

~~[(e)]~~ (d) Only a person who has a current, unencumbered recognition from the board to practice as an advanced practice registered nurse shall use the title "Advanced Practice Registered Nurse" and the abbreviation "A.P.R.N.". No other person shall assume the title "nurse" or in any manner imply that the person is a nurse except as defined in section 457-2 or as provided in sections 457-7 and 457-8 or use the abbreviation "A.P.R.N." or any other words, letter, sign, or device to indicate that the person using the same is an advanced practice registered nurse. Nothing in this section shall preclude a registered nurse who is not recognized by the board as an advanced practice registered nurse and who is currently certified by a national certifying body recognized by the board from using another title designated by certification."

SECTION 10. Section 457-8.6, Hawaii Revised Statutes, is amended to read as follows:

**"§457-8.6 Prescriptive authority for advanced practice registered nurses.**

(a) The board shall grant prescriptive authority to qualified advanced practice registered nurses and shall designate the requirements for advanced nursing practice related to prescriptive authority. ~~[The Hawaii medical board shall submit an annual report of all amendments made to the formularies to the board.] The board shall determine the exclusionary formulary for qualified advanced practice registered nurses who are granted prescriptive authority.~~

(b) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:

- (1) Two persons licensed as advanced practice registered nurses and appointed by the board;
- (2) Two persons licensed in medicine by the Hawaii medical board and appointed by the Hawaii medical board;
- (3) Three persons licensed as pharmacists and appointed by the board of pharmacy;

- (4) One representative of the University of Hawaii John A. Burns school of medicine appointed by the dean of the University of Hawaii John A. Burns school of medicine; and
- (5) One representative from a school of nursing with an advanced practice registered nurse program.

The joint formulary advisory committee shall recommend the applicable formulary for persons recognized under this section. The ~~[Hawaii medical]~~ board shall consider the recommendations of the joint formulary advisory committee in adopting the formulary. The appropriate working relationship with licensed physicians shall be reflected in rules adopted by the board in accordance with chapter 91.

(c) The board shall establish nursing requirements for education, experience, and national certification pursuant to rules adopted in accordance with chapter 91.

(d) Advanced practice registered nurses shall be considered qualified if they have met the requirements of section 457-8.5(a), and have met the advanced pharmacology requirements for initial prescriptive authority pursuant to rules adopted by the board. Only qualified advanced practice registered nurses authorized to diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources and, only as appropriate, to the practice specialty in which the advanced practice nurse is qualified, may:

- (1) Prescribe, procure, administer, and dispense over the counter and legend drugs, and controlled substances pursuant to this chapter and to chapter 329; provided that an advanced practice registered nurse shall not request, receive, or sign for professional controlled substance samples;
- (2) Prescribe, order, and dispense medical devices and equipment; and
- (3) Plan and initiate a therapeutic regimen that includes nutritional, diagnostic, and supportive services including home health care, hospice, and physical and occupational therapy.”

SECTION 11. The insurance commissioner shall perform a review in 2011, of the effects of this Act, and submit a report of the review's findings to the legislature not later than twenty days prior to the convening of the regular session of 2012.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 13. This Act shall take effect upon its approval.

(Approved July 2, 2009.)

#### Notes

1. Should be “432D-23”.

2. Edited pursuant to HRS §23G-16.5.

## A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the recent collapse of national credit, housing, financial, and other markets has had severe consequences on the local economy, resulting in significant losses to employment. The Honolulu Star-Bulletin reports that in December of 2008, the state unemployment rate rose to 5.5 per cent – the highest in almost ten years. By January of 2009, the department of labor and industrial relations was receiving approximately three thousand new unemployment claims per week, which is more than double the number of new claims filed during the same period in 2008. Unfortunately, the economic outlook remains grim. In March of 2009, the Honolulu Star-Bulletin reported that the unemployment numbers continue to rise, with Hawaii's unemployment rate climbing to 6.1 per cent in January of this year – the highest unemployment numbers in twenty-five years.

The legislature finds that the current employment situation in Hawaii compels immediate action by the State, working in partnership with businesses, to provide an alternative to the complete layoff of workers, that would mutually benefit employers and employees. The State currently implements a partial unemployment program through rules implemented by the department of labor and industrial relations. Partial unemployment allows employers to retain their full-time workers by reducing workers' hours, while allowing the employees to collect unemployment benefits and maintain certain benefits for up to four weeks of partial unemployment.

The purpose of this Act is:

- (1) To clarify and temporarily codify implementation of the partial unemployment system; and
- (2) To extend the duration of employees' eligibility for unemployment benefits under partial unemployment from four weeks to eight weeks.

SECTION 2. Chapter 383, Hawaii Revised Statutes, is amended by adding four new sections to part II to be appropriately designated and to read as follows:

**“§383-A Partial unemployment; eligibility.** A new claim or an initial additional claim for partial unemployment benefits may be filed as the department prescribes for any week only if the individual:

- (1) Is a full-time worker;
- (2) Is attached to a regular employer, as defined in section 383-1;
- (3) Worked less than or did not work the individual's normal, customary full-time hours, as defined in section 383-1, for that week;
- (4) Had no earnings or earned less than the individual's weekly benefit amount for that week; and
- (5) Was unemployed due to a lack of full-time work, as defined in section 383-1, for that week.

**§383-B Partial unemployment; claim filing requirements, determinations.**

(a) Claims for partial unemployment shall be filed according to section 383-32. For partially unemployed individuals, a new claim may be taken within twenty-eight days from the week-ending date of the first week of partial unemployment

for which the claim is filed; provided that an individual shall not be required to file a claim earlier than two weeks from the date wages are paid for the claim period.

(b) Continued claim certifications for partial benefits shall be filed as follows:

- (1) An individual may file a continued claim certification for partial unemployment benefits in person, by mail, by telephone, or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department with respect to each week of the individual's partial unemployment. A continued claim certification shall be filed in the same manner as prescribed in rules of the department for continued claim certifications for total or part-total unemployment benefits and not later than twenty-eight days from the end of the week for which the individual claims benefits; provided that an individual shall not be required to file a continued claim certification earlier than two weeks from the date wages are paid for a claim period.
- (2) If, after a week of partial unemployment, eight or fewer consecutive weeks of total unemployment follow the week of partial unemployment, the weeks of total unemployment may be deemed weeks of partial unemployment. However, if total unemployment extends beyond eight consecutive weeks, the individual shall be deemed totally unemployed.
- (3) Notwithstanding paragraph (2), the department may extend partial unemployment beyond eight consecutive weeks of total unemployment under conditions including but not limited to:
  - (A) The individual is retained in an employer-employee relationship;
  - (B) The individual is under obligation to reserve services for the employer; and
  - (C) The individual has a definite or reasonably imminent return to work date.

**§383-C Partial unemployment; waivers.** (a) The registration for work requirements under section 383-29(a) may be waived for individuals who are partially unemployed, as defined in section 383-1.

(b) An individual may be exempted from the work search requirements as determined by rules of the department, or be subject to modified work search requirements as authorized by the department if the individual is waived from the registration for work requirements, as defined in section 383-1.

**§383-D Partial unemployment; reporting requirements.** (a) An employer to whom a claimant for partial unemployment is still attached shall submit verification of earnings and satisfy all low earnings reporting requirements in subsection (b) and rules of the department for each week that the claimant certifies for partial unemployment benefits.

(b) Low earnings reports shall be submitted as follows:

- (1) Whenever, during any weekly pay period in an individual's benefit year, an individual has worked less than full-time hours for the regular employer to which the individual is attached, and the individual's earnings are less than the individual's current weekly benefit amount, the individual's employer, upon request by the department shall:

- (A) Enter the individual's name, social security account number, gross earnings, week-ending date, and the reasons for the individual's reduced work week on a form provided or approved by the department and return the form to the unemployment insurance office as instructed within five working days after the notice of an individual's benefit amount has been mailed to the employer as to all prior weeks for which benefits are claimed. Thereafter, during the benefit year, the employer shall report within five working days after the end of each week or weekly pay period for which the low earnings reports are required; or
  - (B) Furnish the individual personally with the information on a form provided or approved by the department and the individual shall be responsible to submit the report to the unemployment insurance office within five working days after the end of each week or weekly pay period or as instructed by the department.
- (2) If the employer or individual fails to submit the low earnings report as prescribed in paragraph (1)(A) or (B) within the time specified by the department, the department shall determine the individual's eligibility for any week's benefits claimed based on the individual's certification of employment and earnings."

SECTION 3. Section 383-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"Attached to a regular employer" means:

- (1) The employee is being offered work each week by the employee's regular employer; or
- (2) If no work is being offered:
  - (A) The employer is maintaining the individual on the payroll by paying for a medical insurance plan or by maintaining the employee's sick leave or vacation credits; or
  - (B) There is a definite return to work date with the same employer within eight weeks.

"Full-time hours" or "full-time work" means a forty-hour work week unless regarded otherwise according to the standard practice, custom, or agreement in a particular trade, occupation, or business.

"Partial unemployment" or "partially unemployed" means the unemployment of any individual who, during a particular week, was still attached to that individual's regular employer, had no earnings or earned less than that individual's weekly benefit amount, and who worked less than or did not work that individual's normal, customary full-time hours for the individual's regular employer because of a lack of full-time work.

"Registered for work" or "registration for work" means that an individual shall provide information to the employment office to be posted on the department's internet job-matching system, including but not limited to the individual's name, job skills, education, training, prior employment history and work duties, preferred working conditions, occupational licenses, and other relevant occupational information to facilitate work search efforts by the individual and increase job referrals by the employment office. The information shall be posted with the department's assistance or independently by the individual. The employment office shall provide the necessary information to the unemployment office for purposes of determining that the individual's registration for work requirements has been met."



SECTION 4. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- (1) The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe~~;~~ and with section 383-B for partially unemployed individuals;
- (2) The individual has registered for work [at,] as defined in section 383-1, and thereafter continued to report, at,] an employment of office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph ~~[as to] for partially unemployed individuals pursuant to section 383-C,~~ individuals attached to regular jobs, and ~~[as to]~~ other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no ~~[such]~~ rule shall conflict with section 383-21;
- (3) The individual is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if the failure is due to an illness or disability, as evidenced by a physician's certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of the illness and disability has been offered the claimant;
- (4) The individual has been unemployed for a waiting period of one week within the individual's benefit year. No week shall be counted as a waiting period:
  - (A) If benefits have been paid with respect thereto;
  - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph;
- (5) In the case of an individual whose benefit year begins:
  - (A) On or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual's base period a total of fourteen or more weeks of employment, as defined in section 383-1, and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
    - (i) Which were not employment, as defined in section 383-2, or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
    - (ii) Which are agricultural labor, as defined in section 383-9 except service excluded under section 383-7(1), or are domestic service except service excluded under section 383-7(2); except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of those services;
  - (B) On and after October 1, 1989, to January 4, 1992, the individual has been employed, as defined in section 383-2, and

has been paid wages for insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year; and

- (C) After January 4, 1992, the individual has been employed, as defined in section 383-2, and has been paid wages for [such] insured work during the individual's base period in an amount equal to not less than twenty-six times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.

For purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration, as provided in the definition of weeks of employment in section 383-1, were paid has satisfied the conditions of section 383-1 with respect to becoming an employer.

Effective for benefit years beginning January 1, 2004, and thereafter, if an individual fails to establish a valid claim for unemployment insurance benefits under this paragraph, the department shall make a redetermination of entitlement based upon the alternative base period, as defined in section 383-1; provided further that the individual shall satisfy the conditions of section 383-29(a) (5) that apply to claims filed using the base period, as defined in section 383-1, and the establishment of claims using the alternative base period shall be subject to the terms and conditions of sections 383-33 and 383-94; and

- (6) Effective November 24, 1994, an individual who has been referred to reemployment services pursuant to the profiling system under section 383-92.5 [participates] shall participate in those services or in similar services. The individual may not be required to participate in reemployment services if the department determines the individual has completed those services, or there is justifiable cause for the claimant's failure to participate in those services.

For the purposes of this subsection, employment and wages used to establish a benefit year shall not thereafter be reused to establish another benefit year.”

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2012; provided that on July 1, 2012, sections 383-1 and 383-29(a), Hawaii Revised Statutes, shall be reenacted in the same form in which they read on June 30, 2009.

(Approved July 2, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 171**

S.B. NO. 1568

A Bill for an Act Relating to Unemployment Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§383- Part-time work; benefits available.** Notwithstanding any law to the contrary under this chapter, an individual shall not be denied regular unemployment benefits relating to availability for work, active search for work, or refusal to accept work, solely because the individual is seeking only part-time work; provided that this section shall not apply if a majority of the weeks of work in the individual’s base period does not include part-time work.

**§383- Separation for compelling family reason.** (a) An individual shall not be disqualified from regular unemployment benefits for separating from employment if that separation is for a compelling family reason.

For purposes of this section, the term “compelling family reason” means any of the following:

- (1) Domestic or sexual violence that is verified by reasonable and confidential documentation that causes the individual to reasonably believe that the individual’s continued employment may jeopardize the safety of the individual or any member of the individual’s immediate family (as defined by the United States Secretary of Labor), including any of the following circumstances:
  - (A) The individual has a reasonable fear of the occurrence of future domestic or sexual violence at, en route to, or en route from the individual’s place of employment, including being a victim of stalking;

- (B) The anxiety of the individual to relocate to avoid future domestic or sexual violence against the individual or the individual's minor child prevents the individual from reporting to work;
  - (C) The need of the individual or the individual's minor child to obtain treatment to recover from the physical or psychological effects of domestic or sexual violence prevents the individual from reporting to work;
  - (D) The employer's refusal to grant the individual's request for leave to address domestic or sexual violence and its effects on the individual or the individual's minor child, including leave authorized by Section 102 of the Federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended, or other federal, state, or county law; or
  - (E) Any other circumstance in which domestic or sexual violence causes the individual to reasonably believe that separation from employment is necessary for the future safety of the individual, the individual's minor child, or other individuals who may be present in the employer's workplace;
- (2) Illness or disability of a member of the individual's immediate family (as defined by the United States Secretary of Labor); or
  - (3) The need for the individual to accompany the individual's spouse, because of a change in the location of the spouse's employment, to a place from which it is impractical for the individual to commute to work.
- (b) The department may request as reasonable and confidential documentation under subsection (a)(1) the following evidence:
- (1) A notarized written statement of the individual attesting to the status of the individual or the individual's minor child as a victim of domestic or sexual violence and explaining how continued employment creates an unreasonable risk of further violence;
  - (2) A signed written statement from:
    - (A) An employee, agent, or volunteer of a victim services organization;
    - (B) The individual's attorney or advocate;
    - (C) A minor child's attorney or advocate; or
    - (D) A medical or other professional from whom the individual or the individual's minor child has sought assistance related to the domestic or sexual violence,
 attesting to the domestic or sexual violence and explaining how the continued employment creates an unreasonable risk of further violence; or
  - (3) A police or court record suggesting or demonstrating that the continued employment may cause an unreasonable risk of further violence.
- (c) All information provided to the department pursuant to this section, including any statement of the individual or any other documentation, record, or corroborating evidence discussing or relating to domestic or sexual violence, and the fact that the individual has applied for, inquired about, or obtained unemployment compensation by reason of this section shall be retained in the strictest confidence by the individual's former or current employer, and shall not be disclosed except to the extent that disclosure is requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by applicable federal or state law.

(d) As used in this section, the terms “domestic or sexual violence,” “stalking,” and “victim services organization” shall have the same meaning as in section 378-71.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2009.

(Approved July 2, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 172

S.B. NO. 55

A Bill for an Act Relating to Public Accountancy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that current laws require both individuals and firms to obtain licenses or permits to practice public accountancy. However, permits for firms to practice have never been issued under section 466-7(d), Hawaii Revised Statutes, because the state board of public accountancy has never enacted administrative rules to establish the criteria and process for obtaining a firm permit. This has been problematic for local accountancy firms seeking to certify their full compliance with Hawaii’s public accountancy law for purposes of obtaining federal or out-of-state contracts.

The purpose of this Act is to suspend the requirement that accounting firms must obtain a permit to actively engage in the practice of accountancy, by repealing the requirement until one hundred eighty days after the effective date of administrative rules establishing the methods and requirements for obtaining a firm permit. This Act thus enables accountancy firms that otherwise comply with the State’s accountancy law to certify their full compliance.

SECTION 2. Section 466-7, Hawaii Revised Statutes, is amended to read as follows:

**“§466-7 Permits to practice.** (a) A license and permit are required to actively engage in the practice of public accountancy. The board may grant or renew a permit to actively engage in the practice of public accountancy. Permits shall be initially issued and renewed for periods of two years but in any event shall expire on December 31 of every odd-numbered year. The board shall prescribe the methods and requirements for application.

(b) An applicant for the initial issuance or renewal of a permit shall have:

- (1) A valid license;
- (2) Completed continuing professional education hours, the content of which shall be specified by the board which may provide for special consideration by the board to applicants for permit renewal when, in the judgment of the board, full compliance with all requirements of continuing education cannot reasonably be met;
- (3) Completed an application; and
- (4) Paid appropriate fees and assessments.

(c) The board may grant a temporary permit to actively engage in the practice of public accountancy to any person who:

- (1) Has attained eighteen years of age;
- (2) Possesses a history of competence, trustworthiness, and fair dealing;
- (3) Holds a valid license of certified public accountant or of public accountant issued under the laws of another state, or who holds a valid comparable certificate, registration, or license or degree from a foreign country determined by the board to be a recognized qualification for the practice of public accountancy in such other country;
- (4) Incidental to the person's practice in such other state or country, desires to practice public accountancy in this State on a temporary basis; and
- (5) Has completed an application.

Such permit shall be effective for a period not exceeding three months, and shall specify the nature and extent of the practice so permitted.

~~[(d) All firms shall obtain a permit to practice. The board may issue or renew a permit to actively engage in the practice of public accountancy to any firm which submits a completed application and demonstrates qualifications as prescribed by the board.]~~

(e) ~~(d)~~ Failure to submit the required fees, continuing education hours, or other requirements for renewal as specified in this section by December 31 of every odd-numbered year, shall constitute forfeiture of the permit. Continued performance in the practice of public accountancy without a permit shall constitute unlicensed activity and the individual ~~[or firm]~~ shall be subject to sections 466-9, 466-11, 487-13, and 26-9.

~~[(f)]~~ (e) The board may restore forfeited permits to the individual ~~[or firm which]~~ who satisfies the following:

- (1) The requirements of subsection (a), (b), or (c) ~~[- or (d) of this section];~~ and
- (2) Payment of required fees."

SECTION 3. Section 466-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An application for the issuance of a biennial permit to practice for an individual ~~[or firm]~~ under section 466-7(a) ~~[and (d)]~~ shall be accompanied by the application and permit to practice fees."

SECTION 4. This Act shall terminate any rights and duties that matured, penalties that were incurred, and proceedings based on acts or omissions arising under section 466-7(d), Hawaii Revised Statutes, before its reenactment as provided in section 9 of this Act.

SECTION 5. The state board of public accountancy shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, prescribing the methods and requirements for a firm to apply for and obtain a permit to engage in the practice of public accountancy pursuant to section 466-7, Hawaii Revised Statutes, as that section read on the day before the effective date of this Act.

SECTION 6. The director of commerce and consumer affairs shall report the progress and status of the adoption of rules as required by this Act to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 7. The director of commerce and consumer affairs shall promptly notify the legislature in writing upon the adoption of administrative rules prescribing the methods and requirements for a firm to apply for and obtain a permit to engage in the practice of public accountancy and shall provide statewide public notice of the adoption of rules pursuant to chapter 1-28.5, Hawaii Revised Statutes.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval; provided that sections 466-7 and 466-8, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act, one hundred eighty days after the effective date, as determined by section 91-4(b), Hawaii Revised Statutes, of the rules prescribing the methods and requirements for application by a firm to engage in the practice of public accountancy pursuant to section 466-7, Hawaii Revised Statutes, as that section read on the day before the effective date of this Act.

(Approved July 6, 2009.)

## ACT 173

H.B. NO. 589

A Bill for an Act Relating to Renewable Energy Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for over ninety per cent of its energy needs is greater than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the environment and economic health of the people of Hawaii. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

To shape Hawaii's energy and environmental future and achieve the goal of energy self-sufficiency for the State, efforts must continue on all fronts, integrating new and evolving technologies, seizing upon opportunities to become more economically diversified, and providing incentives and assistance to address barriers.

To develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may constitute only a portion of a large legal lot, and it may be impractical or undesirable to lease or convey the entire legal lot for the renewable energy project, or to encumber the entire legal lot with a mortgage that provides financing for the project. Currently,

however, subdivision laws and county ordinances generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is required.

Reported Hawaii supreme court cases, including *Whitlow v. Jennings*, 40 Haw. 523 (1954), have recognized that transactions involving lots that have not been approved by the county pursuant to subdivision laws or county ordinances may be unenforceable. Unfortunately, the process of obtaining county, state, and land court approval of subdivision and easement maps is relatively time-consuming and often requires more than one year to complete.

As recognized by the court in the *Whitlow v. Jennings* case, the purpose of laws and ordinances requiring county subdivision approval is to protect the public by ensuring adequate light, air, fire protection, traffic safety, proper sanitation, and drainage in the proposed subdivision and the protection of innocent purchasers from buying lots upon which they could not build because of the provisions of the various health and sanitary statutes and regulations. However, these laws, ordinances, and court rulings have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without subdivision approval. This prevents or discourages the use or financing of leases and easements for renewable energy projects.

A subdivision consisting of a solar energy facility or a wind energy facility does not call for the same infrastructure requirements as a housing subdivision. Further, the legislature supports energy self-sufficiency by decreasing Hawaii's dependence on fossil fuel with renewable energy projects. On February 13, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, also known as the Federal Stimulus Package, providing \$62,000,000,000 in grant funding, loan guarantees, and tax incentives for renewable energy and energy efficiency programs, including \$6,000,000,000 for new loan guarantees aimed at standard renewable projects, such as wind or solar projects, and for electricity transmission projects; \$6,300,000,000 for energy efficiency and conservation grants to help state and local governments make investments that make them more energy efficient and reduce carbon emissions; and \$500,000,000 to prepare workers for careers in energy efficiency and renewable energy fields.

The legislature further finds the original intent of subdivision laws and ordinances, Hawaii's goal for energy self-sufficiency, and obtaining financing for renewable energy projects from private or public entities can be achieved at the same time without compromising one for the other.

Accordingly, the purpose of this Act is to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision approval, and instead requiring approval for exemption from subdivision requirements, from the applicable county or other approving agency. This Act will also assist renewable energy projects in Hawaii to be eligible for funding under the Federal Stimulus Package.

SECTION 2. Chapter 201N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201N-A Exemption from subdivision requirements.** (a) Notwithstanding any other law or ordinance to the contrary:



- (1) Lands within the agricultural or conservation state land use district may be leased; and
- (2) Easements may be created and granted over lands within the agricultural or conservation state land use district,

for the purpose of developing and financing a renewable energy project or accessing a renewable energy project that is a permitted use in the district, even if the leased land or easement area has not been subdivided as a separate subdivided lot or easement. Leases and easements authorized by this section shall be valid leases and easements for all purposes, but the exemption from subdivision requirements authorized by this section shall be subject to the requirements and limitations set forth in subsection (d).

(b) Without limiting the generality of subsection (a), the following may be performed without complying with subdivision requirements:

- (1) All or a portion of a legal lot may be leased as a site for a renewable energy project or access to the project;
- (2) Easements or other possessory interests, whether exclusive or non-exclusive, may be granted to use all or a portion of the legal lot as a renewable energy project site or access to the project;
- (3) Maps, leases, licenses, grants of easements, or other instruments providing for the right to use all or a portion of a legal lot as delineated on a map for a renewable energy project site or access to the project may be recorded; and
- (4) Mortgages and other security interests may be granted with respect to any lease or easement created pursuant to this section, and the holders of such mortgages or other security interests may foreclose upon the lease or easement covered and otherwise enforce the terms of the mortgage and security documents, subject to compliance with applicable laws other than subdivision requirements.

(c) The land court, bureau of conveyances, and other governmental agencies shall accept for filing and recording all instruments and maps pertaining to leases, easements, mortgages, and other security documents authorized pursuant to this section.

(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements and shall be subject to the following limitations:

- (1) The lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land;
- (2) The lease shall have an initial term of at least twenty years;
- (3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E;
- (4) With respect to leases and easements on lands within a conservation state land use district, the exemption from subdivision requirements provided by this section shall be for wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; and
- (5) The county agency charged with administering subdivisions in the county in which the renewable energy project is to be situated or, if the land is in a conservation state land use district, the department

of land and natural resources, shall approve the exemption from subdivision requirements within ninety days after the project's developer and the owner of the land on which the renewable energy project is to be situated have submitted the conceptual schematics or preliminary plans and specifications for the renewable energy project to the county agency or the department of land and natural resources, and have provided to such county agency or the department of land and natural resources, as applicable, a certification and agreement that all applicable and appropriate environmental reviews and permitting shall be completed prior to commencement of development of the renewable energy project. If, on the ninety-first day, an exemption has not been approved, it shall be deemed disapproved by the county agency or the department of land and natural resources, whichever is applicable.

(e) Nothing in this section shall:

- (1) Exempt the actual development, construction, or operation of any use, project, or improvement from any applicable state or county laws, ordinances, restrictions, permits, or approvals, including restrictions on allowable uses or conditions and requirements for adequate infrastructure or mitigation measures;
- (2) Exempt renewable energy projects from any permit or approval process under chapter 183C, 205, 205A, or 343;
- (3) Exempt from subdivision requirements the conveyance of any fee interest in land; or
- (4) Prevent any agency or authority that issues permits or approvals for renewable energy projects from imposing reasonable and appropriate restrictions on the type of siting, development, construction, and operation of a renewable energy project to protect agricultural resources and activities, the environment, natural resources, cultural resources and activities, or the health, safety, and welfare of the State.

(f) All agencies and authorities that issue permits or approvals for renewable energy projects may adopt rules or procedures to:

- (1) Determine the type of renewable energy project that may be allowed within an agricultural or conservation district;
- (2) Determine criteria for the appropriate siting of the renewable energy project within an agricultural or conservation district; and
- (3) Identify mitigation measures applicable to renewable energy projects to protect agricultural resources and activities, the environment, natural resources, cultural resources and activities, health, safety, and welfare of the State.

(g) This section is not intended to diminish the discretion of any agency or any authority to approve or disapprove any permit application."

SECTION 3. Chapter 201N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201N-B Subdivision exemptions in existence on June 30, 2013.** (a) Any lease or easement (together with any mortgages or other documents encumbering either) that received a subdivision exemption that is in existence on June 30, 2013, may continue to be effective and shall continue to enjoy the exemption from subdivision requirements granted under section 201N-A after that section is repealed on July 1, 2013; provided that the following restrictions are complied with:

- (1) The terms of the lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land; and
- (2) The lease shall have an initial term of at least twenty years.
- (b) Notwithstanding that the leased land or easement area is not a lot of record, the lease or easement that received the subdivision exemption may be further encumbered, or any existing encumbrance may be amended, extended, or cancelled, by recordation of a document in the bureau or the land court, as applicable, and the encumbrance shall only affect and encumber the leased land or easement area. Encumbrances shall be subject to applicable foreclosure laws, where applicable.
- (c) The lease or easement may be transferred or assigned by recordation of a document in the bureau or the land court, as applicable; provided that the restrictions in subsection (a)(1) and (2) are complied with and acknowledged by the transferee or assignee in any conveyance or assignment document.
- (d) The term of the lease or easement may be extended, and the terms and conditions of the lease or easement may be amended or modified; provided that the restrictions in subsection (a)(1) and (2) are complied with, and that any material change to the leased land or easement area shall be subject to subsection (e).
- (e) Any material change after June 30, 2013, regarding the leased land or easement area shall be subject to subdivision requirements; provided that the county agency charged with administering subdivisions (for land within the agricultural state land use district) or the department of land and natural resources (for land within the conservation state land use district) shall deem all subdivision requirements from which the lease or easement was exempt pursuant to the original subdivision exemption to be met and the lease or easement shall continue to be exempt from the requirements. The lease or easement shall only be subject to the additional subdivision requirements, if any, necessitated by the material change.
- (f) For purposes of this section:  
“Bureau” means the bureau of conveyances of the State of Hawaii.  
“Land court” means the office of the assistant registrar of the land court of the State of Hawaii.  
“Material change” means any material change affecting the location, size, boundaries, or configuration of the leased land or the easement area that would require state or county review and approval under the subdivision requirements.  
“Subdivision exemption” means the exemption to the subdivision requirements received pursuant to section 201N-A.  
“Subdivision requirements” means all state laws or county ordinances and permits setting forth standards or requirements for improvements and approvals applicable to the subdivision or consolidation of land, changes in legal boundaries, or the creation or consolidation of parcels, easements, or other interest in land.”

SECTION 4. Section 201N-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

““Subdivision requirements” means all state laws or county ordinances and permits setting forth standards or requirements for improvements and approvals applicable to the subdivision or consolidation of land, changes in legal

boundaries, or the creation or consolidation of parcels, easements, or other interest in land.”

SECTION 5. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that sections 2 and 4 of this Act shall be repealed on July 1, 2013.

(Approved July 7, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 174**

S.B. NO. 1248

A Bill for an Act Relating to State Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that in these difficult economic times of lower revenues for the State and closure of key businesses, government must seek ways to encourage and expedite economic growth and diversity.

The State’s enterprise zones program in the department of business, economic development, and tourism was established to stimulate business and industrial growth through regulatory flexibility and tax incentives in areas that are viable for neighborhood revitalization.

The purpose of this Act is to:

- (1) Add a definition of “eligible business activity” and clarify the definitions of “qualified business” and “service business”;
- (2) Allow limited liability companies to be qualified businesses and service businesses;
- (3) Extend the tax credits and exemptions for businesses engaged in the manufacturing of tangible personal property or in the producing or processing of agricultural products under section 209E-10, Hawaii Revised Statutes, for an additional three years;
- (4) Limit the general excise tax exemption for qualified businesses engaged in the production of genetically-engineered agricultural products under section 209E-11, Hawaii Revised Statutes, to a total of ten years;
- (5) Allow the receipts, sales, and employees of a business’s establishments in all enterprise zones located within the same county to count toward qualification requirements; and
- (6) Delete obsolete provisions.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to read:  
““Eligible business activity” means the:

- (1) Manufacture of tangible personal property, the wholesale sale of tangible personal property as described in section 237-4, or a service business as defined in this section;
- (2) Production of agricultural products where the business is a producer as defined in section 237-5, or the processing of agricultural products, all or some of which were grown within an enterprise zone;
- (3) Research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or
- (4) Production of electric power from wind energy for sale primarily to a public utility company for resale to the public."

2. By amending the definitions of "qualified business" and "service business" to read:

"Qualified business" means any corporation, partnership, limited liability company, or sole proprietorship authorized to do business in the State that is qualified under section 209E-9, subject to the state corporate or individual income tax under chapter 235, and is engaged in an eligible business activity as defined in this chapter.

- ~~[(1) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter;~~
- ~~(2) Engaged in producing agricultural products where the business is a producer as defined in section 237-5, or engaged in processing agricultural products, all or some of which were grown within an enterprise zone;~~
- ~~(3) Engaged in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or~~
- ~~(4) Engaged in producing electric power from wind energy for sale primarily to a public utility company for resale to the public.]~~

"Service business" means any corporation, partnership, limited liability company, or sole proprietorship that repairs ships, aircraft, or assisted technology equipment, provides telecommunication services, information technology design and production services, medical and health care services, or education and training services as defined in this chapter."

SECTION 3. Section 209E-4, Hawaii Revised Statutes, is amended to read as follows:

**"§209E-4 Enterprise zone designation.** (a) The governing body of any county may apply in writing to the department to have an area declared to be an enterprise zone. The application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives.

(b) The governor, upon the recommendation of the director, shall approve the designation of up to six areas in each county as enterprise zones for a period of twenty years. Any such area shall be located in one United States census tract or two or more contiguous United States census tracts in accordance with the most recent decennial United States Census. The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following criteria:

- (1) Twenty-five per cent or more of the population have incomes below eighty per cent of the median family income of the county; or
- (2) The unemployment rate is 1.5 times the state average.

[(c) Notwithstanding subsection (b), census tract #405 within the county of Kauai shall be eligible for designation as an enterprise zone. The eligibility for designation shall remain in effect until January 1, 1997, unless the governor earlier determines that the eligibility is no longer necessary.

(d) Notwithstanding subsection (b) or (c), only lands classified as agricultural in the Waialua district on Oahu, as defined in section 4-1(3)(D), shall be designated an enterprise zone on July 1, 1997, and the designation shall remain in effect until June 30, 2002.]”

SECTION 4. Section 209E-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) Any business firm may be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business in an eligible business activity within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone ~~[establishment’s]~~ establishments’ gross receipts attributable to the active conduct of trade or business within ~~[the]~~ enterprise ~~[zone;]~~ zones located within the same county; and
- (3) Either:
  - (A) Increases its average annual number of full-time employees employed at the business’s establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of its first tax year of participation, and during each subsequent taxable year at least maintains that higher level of employment; or
  - (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within ~~[the]~~ enterprise ~~[zone]~~ zones located within the same county by two per cent annually.

For business firms engaged in producing or processing agricultural products, receipts from value-added products made from crops grown within ~~[an]~~ enterprise ~~[zone]~~ zones located within the same county and sold at retail pursuant to the limits of subsection (e) shall count toward the gross receipts requirement under paragraph (2).

(b) A business firm may also be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an eligible business activity in an area immediately prior to ~~[an]~~ the area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); and
- (3) Either:
  - (A) Increases its average annual number of full-time employees employed at the ~~[business’s]~~ business’s establishment or establishments ~~[located]~~ within ~~[the]~~ enterprise ~~[zone]~~ zones located within the same county by at least ten per cent by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation~~];~~, and for businesses eligible for tax credits extending past the seventh year, at least maintains that higher level of employment during each subsequent taxable year; provided that the percentage increase shall be based upon the employee count at the beginning of the initial year of operation within the enterprise ~~[zone;]~~ zone or zones; or

- (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within ~~[the enterprise zone]~~ enterprise zones located within the same county by two per cent annually.

(c) After designation ~~[as]~~ of an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department that provides the information necessary for the department to determine if it may certify the applicability of the tax credits and exemptions provided in this chapter for the business firm [qualifies as a qualified business]. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county."

2. By amending subsection (e) to read:

"(e) Tangible personal property shall be sold at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property shall take place in ~~[the same]~~ an enterprise zone located within the same county in which the tangible personal property is sold. Services shall be sold at an establishment of a qualified business engaged in a service business within an enterprise zone ~~[and the services shall be delivered in the same enterprise zone in which sold. Any services rendered outside an enterprise zone shall not be deemed to be the services of a qualified business].~~"

SECTION 5. Section 209E-10, Hawaii Revised Statutes, is amended to read as follows:

**"§209E-10 State business tax credit.** (a) The department shall certify annually to the department of taxation the applicability of the tax credit provided in this chapter for a qualified business against any taxes due the State. Except for the general excise tax, the credit shall be eighty per cent of the tax due for the first tax year, seventy per cent of the tax due for the second tax year, sixty per cent of the tax due for the third year, fifty per cent of the tax due the fourth year, forty per cent of the tax due the fifth year, thirty per cent of the tax due the sixth year, and twenty per cent of the tax due the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year at the rate of twenty per cent of the tax due for each of the subsequent three tax years. Any tax credit not usable shall not be applied to future tax years.

(b) When a partnership is eligible for a tax credit under this section, each partner shall be eligible for the tax credit provided for in this section on the partner's income tax return in proportion to the amount of income received by the partner from the partnership. Any qualified business having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business. Tax credits provided for in this section shall only apply to taxable income of a qualified business attributable to the conduct of business within ~~[the]~~ enterprise [zone] zones located within the same county.

(c) In addition to any tax credit authorized under this section, any qualified business shall be entitled to a tax credit against any taxes due the State in an amount equal to a percentage of unemployment taxes paid. The amount of the credit shall be equal to eighty per cent of the unemployment taxes paid during the first year, seventy per cent of the taxes paid during the second year, sixty per cent of the taxes paid during the third year, fifty per cent of the taxes paid during the fourth year, forty per cent of the taxes paid during the fifth year, thirty per cent of the taxes paid during the sixth year, and twenty per cent of the taxes paid

during the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year in an amount equal to twenty per cent of the taxes paid during each of the subsequent three tax years.

(d) Tax credits provided for in subsection (c) shall only apply to the unemployment tax paid on employees employed at the qualified ~~[business]~~ business's establishment or establishments ~~[located]~~ within ~~[the]~~ enterprise ~~[zone]~~ zones located within the same county. Any tax credit not usable shall not be applied to future tax years."

SECTION 6. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

**"§209E-11 State general excise exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from ~~[the manufacture of tangible personal property, the wholesale sale of tangible personal property, the engaging in a service business by a qualified business, or the engaging in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products;]~~ an eligible business activity as defined in this chapter; provided that agricultural businesses other than those engaged in the production of genetically-engineered agricultural products shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone~~[-]~~ or a business that has been approved by the department to enroll into the enterprise zone program. The exemption shall extend for a period not to exceed seven years; provided that for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the exemption shall extend for a period not to exceed ten years; provided further that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2009.

(Approved July 10, 2009.)

## ACT 175

H.B. NO. 1470

A Bill for an Act Relating to Hawaii Public Procurement Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I PROCUREMENT EXEMPTIONS

SECTION 1. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:



- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
  - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
  - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
  - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
  - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
  - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
  - (G) To governmental bodies of the State;
  - (H) As loans, under loan programs administered by a governmental body; and
  - (I) For contracts awarded in accordance with chapter 103F[-];
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
  - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
  - (B) Works of art for museum or public display;
  - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
  - (D) Meats and foodstuffs for the Kalaupapa settlement;
  - (E) Opponents for athletic contests;
  - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
  - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
  - (H) Goods and services for commercial resale by the State;
  - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;

- (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this [State:] state;
- (K) Financing agreements under chapter 37D; and
- (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; [and]
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
  - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
  - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms[-]; and
- (6) With a bidder or offeror who is a United States General Services Administration-approved sole source vendor, who shall be exempt from complying with section 103D-302, 103D-303, or 103D-304, as applicable, in any procurement funded by state and federal matching funds, if the bidder or offeror was responsible for obtaining and was the recipient of the federal funds."

SECTION 2. Section 103D-305, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-305 Small purchases; prohibition against parceling.** (a) Procurements of less than ~~[\$50,000]~~ \$100,000 for goods[-] or services, or \$250,000 for construction shall be made in accordance with procedures set forth in rules adopted by the policy board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

(b) Procurements of greater than \$50,000 for construction under subsection (a) shall require security by a performance bond delivered to the purchasing agency that is:

- (1) In a form prescribed by the rules of the policy board;
- (2) Executed by a surety company authorized to do business in this state; and
- (3) In an amount equal to one hundred per cent of the price specified in the contract,

or shall otherwise be secured by a performance bond in a manner satisfactory to the purchasing agency.

~~[(b)]~~ (c) Procurements of \$25,000 to less than ~~[\$50,000]~~ \$100,000 shall be made in accordance with small purchase procedures; provided that small purchase procurements through an electronic system shall be required after the

policy board has adopted rules for electronic procurement and provided training to the affected agency.”

## PART II PROCUREMENT PREFERENCES

SECTION 3. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103D- Agricultural products subject to this chapter.** The following agricultural products shall be subject to this chapter:

- (1) Fresh meats and produce; and
- (2) Animals and plants.

Except for the exemptions under section 103D-102(b), no exemptions under this chapter shall apply to this section.”

SECTION 4. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part X to be appropriately designated and to read as follows:

**“§103D- Failure to adequately verify, deliver, or supply Hawaii products.**

If the administrator or procurement officer who has awarded a contract under section 103D-1002, finds that in the performance of that contract there has been a failure to comply with section 103D-1002, the contract shall be voidable and the findings shall be referred for debarment or suspension proceedings under section 103D-702.”

SECTION 5. Section 103D-1001, Hawaii Revised Statutes, is amended as follows:

1. By adding the definition of “Hawaii input” to be appropriately inserted and to read:

““Hawaii input” means the part of the cost of a product that is attributable to production, manufacturing, or other expenses arising within the state. “Hawaii input” includes but is not limited to:

- (1) The cost to mine, excavate, produce, manufacture, raise, or grow the materials in Hawaii;
- (2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii, including but not limited to other articles, materials, and supplies, added to the imported materials;
- (3) The cost of labor, variable overhead, utilities, and services, incurred in the production and manufacturing of materials or products in Hawaii; and
- (4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools, and equipment, situated and located in Hawaii and used in the production or manufacturing of a product.”

2. By amending the definition of “Hawaii products” to read:

““Hawaii products” means products that are mined, excavated, produced, manufactured, raised, or grown in the [State] state and where the [input constitutes no less than twenty five] cost of the Hawaii input towards the product exceeds fifty per cent of the [manufactured] total cost[;] of the product; provided that:

- [(1) Where the value of the input constitutes twenty five per cent or more, but less than fifty per cent, of the manufactured cost, the product shall be classified as class I;

- (2) ~~(1) Where the value of the input [constitutes] exceeds fifty per cent [or more, but less than seventy-five per cent,] of the [manufactured] total cost, the product shall be classified as class [H:] I; and~~
- ~~[(3) Where the value of the input constitutes seventy-five per cent or more of the manufactured cost, the product shall be classified as class III.]~~
- (2) Where any agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product is raised, grown, or harvested in the state, the product shall be classified as class II."

SECTION 6. Section 103D-1002, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-1002 Hawaii products.** (a) A purchasing agency shall review all specifications in a bid or proposal for purchase ~~[from the] of~~ Hawaii products ~~[list] where these products are available;~~ provided that the products:

- ~~(1) Meet the minimum specifications and the selling price f.o.b. jobsite;~~
- ~~(2) Unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and~~
- ~~(3) Unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price of a similar non-Hawaii product by more than:~~
  - ~~(A) Three per cent where class I Hawaii products are involved;~~
  - ~~(B) Five per cent where class II Hawaii products are involved; or~~
  - ~~(C) Ten per cent where class III Hawaii products are involved].~~
- (b) All invitations for bids and requests for proposals shall ~~[include];~~
- (1) Include a description of the products that are listed in the Hawaii products list established pursuant to this section, [and their established classes,] which may be used to complete the scope of work specified in the invitation for bids or request for proposals; ~~where the products are]; or~~
- (2) Allow as part of the offer, self-certification that the Hawaii products qualify for preference;

provided that the offer may be evaluated along with any other published criteria in the solicitation, including but not limited to considerations such as specific nutritional content or its equivalent, timing of delivery, quality or freshness, and past performance, if applicable.

All Hawaii products in any bid or request for proposal shall be made available [and meet] for inspection, or additional information may be requested to verify that the Hawaii product meets the minimum specifications.

(c) All persons submitting bids or proposals to claim a Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a Hawaii product.

(d) Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price or bid [or] offered for a Hawaii product item shall be decreased by subtracting ~~[therefrom: three per cent, five per cent, or] ten per cent for [the] class II, class II, or class III] Hawaii product items bid or offered, [respectively,] or fifteen per cent for class II Hawaii product items bid or offered.~~ The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(e) Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the [State] state who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection ~~[(h)-]~~ (k). The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) Any person not on the Hawaii products list desiring a preference pursuant to this section shall certify the Hawaii product when submitting a response to a solicitation; provided that the person certifies under penalty of sanctions that the offered Hawaii products meet the requirements for the preference.

The procurement officer may request additional information deemed necessary to qualify a product and shall have sole discretion in determining qualification for the preference.

Any offeror whose product is deemed not qualified for the preference may appeal by filing a written request for reexamination of facts to the procurement officer. Upon determining that the offeror is qualified for the preference, the procurement officer shall notify the administrator and the administrator shall place the offeror on the Hawaii products list.

(g) Solicitations shall contain a provision notifying offerors who request application of the preference that in the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall immediately notify the chief procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

(h) Nothing in this section shall limit, restrict, or preclude a Hawaii product from any preferences, set-asides, or criteria that may be applied under section 103D-906, and this section shall operate instead to mutually enhance the purpose of this section and section 103D-906.

~~[(f)]~~ (i) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

~~[(g)]~~ (i) Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency on account of the purchase or contract.

~~[(h)]~~ (k) For the purposes of this section, "soil enhancement product" means any nonchemical soil preparation, conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; provided that the term does not include any plant fertilizer intended to stimulate or induce plant growth through chemical means. All state agencies shall include in their solicitations, when required, the soil enhancement products identified on the Hawaii products list pursuant to subsection (e)."

### PART III PROCUREMENT PROTESTS AND DISPUTES

SECTION 7. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§103D- Procurement statistics.** The state procurement office shall keep statistics on solicitations and awards protested under section 103D-701 for the purpose of improving procurement procedures. The statistics shall include information on protests involving inadvertent errors."

SECTION 8. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

**“§103-32.1 Contract provision for retainage; subcontractors.** (a) Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the procurement officer.

(b) A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(c) Any public contract may include a provision for the retainage of a portion of the amount due under the contract to the contractor to ensure the proper performance of the contract; provided that:

- (1) The sum withheld by the procurement officer from the contractor shall not exceed five per cent of the total amount due the contractor and that, after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the procurement officer may continue to withhold, as retainage, sums not exceeding five per cent of the amount due the contractor; and

- (2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

(d) Where a subcontractor has provided evidence to the contractor of:

- (1) A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this [State;] state;

- (2) Any other bond acceptable to the contractor; or

- (3) Any other form of collateral acceptable to the contractor,

the retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor. This subsection shall also apply to the subcontractors who subcontract work to other subcontractors.

(e) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that:

- (1) Permit the contractor or subcontractor to retain, without cause, a specified percentage of no more than ten per cent of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond, subject however, to the limitations of subsection (d); and

- (2) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's payment request may be withheld by the procurement officer in accordance with the subcontract agreement, without incurring any obligation to pay interest or a late payment penalty if:

~~(A) A notice conforming to the standards of subsection (f) has been previously furnished to the subcontractor; and~~

(B) ~~A copy of any notice issued by the contractor or subcontractor pursuant to subparagraph (A) has been furnished to the procurement officer.~~

~~(F) A~~ a written notice of any withholding ~~[shall be]~~ is issued to a subcontractor, with a copy to the procurement officer, specifying the following:

~~[(1)] (A)~~ The amount to be withheld;

~~[(2)] (B)~~ The specific causes for the withholding under the terms of the subcontract; and

~~[(3)] (C)~~ The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

~~[(g)] (f)~~ A contractor may not request payment from the procurement officer of any amount withheld or retained in accordance with subsection (e) until such time as the contractor has determined and certified to the procurement officer that the subcontractor is entitled to the payment of such amount.

~~[(h)] (g)~~ The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the procurement officer meeting the requirements of section 103-32.2."

SECTION 9. Section 103D-709, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-709 Administrative proceedings for review.** (a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo, any request from any bidder, offeror, contractor, or person aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under section 103D-310, 103D-701, or 103D-702.

(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision [which] not later than forty-five days from the receipt of the request under subsection (a), that shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under section 103D-710.

(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and ~~[(103D-702(g))]~~ may initiate a proceeding under this section. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary evidence, conduct cross-examination as may be required, and argument on all issues involved. ~~[The rules of evidence shall apply.]~~ Fact finding under section 91-10 shall apply.

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under this section; provided that:

(1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or

(2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to or less than ten per cent of the estimated value of the contract.

(e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

- (1) \$1,000 for a contract with an estimated value of less than \$500,000;
- (2) \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or
- (3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000.

If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.

[(d)] (f) The hearings officers shall ensure that a record of each proceeding which includes the following is compiled:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings of fact;
- (5) A recording of the proceeding which may be transcribed if judicial review of the written decision is sought under section 103D-710.

[(e)] (g) No action shall be taken on a solicitation or an award of a contract while a proceeding is pending, if the procurement was previously stayed under section 103D-701(f).

[(f)] (h) The hearings officer shall decide whether the determinations of the chief procurement officer or the chief procurement officer's designee were in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate in accordance with this chapter.

[(g)] (i) The policy board shall adopt such other rules as may be necessary to ensure that the proceedings conducted pursuant to this section afford all parties an opportunity to be heard.

(j) As used in this section, "estimated value of the contract" or "estimated value," with respect to a contract, means the lowest responsible and responsive bid under section 103D-302, or the bid amount of the responsible offeror whose proposal is determined in writing to be the most advantageous under section 103D-303, as applicable."

SECTION 10. Section 103D-710, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Within ~~twenty~~ ten calendar days of the filing of an application for judicial review, the hearings officer shall transmit the record of the administrative proceedings to the circuit court of the circuit where the case or controversy arises."

2. By amending subsection (e) to read:

"(e) ~~Upon~~ No later than thirty days from the filing of the application for judicial review, based upon review of the record the circuit court may affirm the decision of the hearings officer issued pursuant to section 103D-709 or remand



the case with instructions for further proceedings; or it may reverse or modify the decision and order if substantial rights may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the chief procurement officer or head of the purchasing agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion[-];

provided that if an application for judicial review is not resolved by the thirtieth day from the filing of the application, the court shall lose jurisdiction and the decision of the hearings officer shall not be disturbed. All time limitations on actions, as provided for in section 103D-712, shall remain in effect."

#### PART IV MISCELLANEOUS PROVISIONS

SECTION 11. Part II does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2009; provided that:

- (1) Part I shall be repealed on July 1, 2012, and sections 103D-102 and 103D-305, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act; and
- (2) Part III shall be repealed on July 1, 2011, and sections 103-32.1, 103D-709, 103D-710(c) and 103D-710(e), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved July 13, 2009.)

## ACT 176

S.B. NO. 1677

A Bill for an Act Relating to Lands Controlled by the State.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to establish a more comprehensive process for the sale of state-owned land, and to reserve a larger oversight

role for the legislature to assure that key information about certain sales or exchanges of land is shared with the legislature.

Realizing that each sale, however reasonable or necessary, is final and permanent, and recognizing that the legislature may exercise its power over the State's land by general laws only, this Act establishes a legislative prior approval process that must be completed before most state-owned land may be sold, and maintains the current legislative disapproval process that must be completed for the exchange of certain state-owned land for private land to be final, except as amended with regard to notification.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . SALE OR GIFT OF LANDS**

**§171- Legislative approval of sale or gift of lands.** (a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, including:

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;
- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title; and
- (8) Land to which the high technology development corporation in its corporate capacity holds title.

(b) Notwithstanding any law to the contrary, no sale of lands described in subsection (a) in fee simple including land sold for roads and streets, or gift of lands described in subsection (a) in fee simple to the extent such gift is otherwise permitted by law, shall occur without the prior approval of the sale or gift by the legislature by concurrent resolution to be adopted by each house by at least a two-thirds majority vote of the members to which each house is entitled in a regular or special session at which a concurrent resolution is submitted for approval of the sale; provided that the provisions of this section shall not apply to remnants, as that term is defined in section 171-52, or portions thereof; and provided further that this section shall not apply to the issuance of licenses, permits,

easements, and leases executed in conformance with the laws applicable to the lands listed in subsection (a).

(c) The state department or agency proposing to sell or give any state land described in subsection (a) shall submit for introduction to the legislature a concurrent resolution for review of the proposed sale or gift. The concurrent resolution shall contain a list of all sales or gifts of state land proposed by the state department or agency. The concurrent resolution shall contain the following information:

- (1) The location and area of the parcels of land to be sold or given;
- (2) The appraisal value of the land to be sold or given;
- (3) The names of all appraisers performing appraisals of the land to be sold or given;
- (4) The date of the appraisal valuation;
- (5) The purpose for which the land is being sold or given; and
- (6) A detailed summary of any development plans for the land to be sold or given.

A copy of the concurrent resolution for the prior approval of a sale or gift of land shall also be submitted to the office of Hawaiian affairs when it is submitted to the legislature.

(d) If the legislature fails to approve the concurrent resolution by at least a two-thirds majority vote of both houses, the transaction shall be abandoned by the state department or agency.

(e) Prior to finalizing any proposal for the sale or gift of lands described in subsection (a) to a person or entity other than the State, its agencies, or its entities, and prior to submission of the concurrent resolution to the legislature under subsection (c), the State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or gift in the community where the land to be sold or given is located.

(f) This section shall not apply to sales or gifts of lands described in subsection (a) between state departments or agencies, and to sales of available lands under the Hawaiian homes commission act."

SECTION 3. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Legislative disapproval. Any exchange of public land for private land shall be subject to disapproval by the legislature by two thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session following the date of the board of land and natural resources' approval in principle of the exchange. The department shall submit for introduction to the legislature a resolution for review of action on any exchange to be consummated by the board wherein exchange deeds will be executed by the parties together with the following information: (1) the location and area of the parcels of land to be exchanged; (2) the value of the lands to be conveyed by the State and the private party; (3) the name or names of the appraiser or appraisers; ~~[and]~~ (4) the date of the appraisal valuation~~[-]; and~~ and (5) the purpose for which the lands are being exchanged. A copy of the resolution shall also be submitted to the office of Hawaiian affairs when it is submitted to the legislature."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 13, 2009.)

A Bill for an Act Relating to Intoxicating Liquor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

**“§281-31 Licenses, classes.** (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

- (2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

- (3) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a class 5 dispenser license who meets the requirements of a class 2 license.

(d) Class 3. Wholesale dealer license. A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees, or to

others who are by law authorized to resell but are not by law required to hold a license, the liquor therein specified; provided that samples of liquor may be sold back to the manufacturer. Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license. A license to sell liquor at retail or to class 10 licenses shall authorize the licensee to sell the liquor therein specified in their original packages. Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

(f) Class 5. Dispenser license.

- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

- (2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

- (3) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

(g) Class 6. Club license. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquor to members of

the club and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold and that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(h) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the State and within any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. The license shall be issuable in the county wherein the home port is situated. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(j) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Under this license, the liquor therein specified shall be consumed on the premises.

(k) Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquor for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor, and live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except when the transferee obtains approval from the liquor commission, and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(l) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol, for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor, if the catering activity is directly related to the licensee's food service.

Procedures such as room service, self-service (no-host), minibars or similar service in guest rooms, and service at parties in areas that are the property of and contiguous to the hotel, are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

Any licensee holding a class 12 license on May 1, 2007, and who would otherwise come within this class of license may apply to the liquor commission in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on May 1, 2007, applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice, and upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(m) Class 13. Caterer license. A general license may be granted to any applicant who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions off the premises.

No catering service for the sale of liquor shall be performed off the licensee's premises, unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(n) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;

- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1 manufacturer licensee, or a class 3 wholesale dealer licensee, to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, which shall be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee's premises, for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages; and
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county regulations governing class 1 [manufacturer] licensees and class 3 wholesale dealer licensees.

(o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor, except alcohol, for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

Procedures such as room service, self-service (no-host), minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel, are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail [dealer] license.

Any licensee who would otherwise fall within the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

~~[(p)]~~ Class 16. Winery license. A winery licensee:

- (1) Shall manufacture not more than ten thousand barrels of wine on the licensee's premises during the license year;



- (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
- (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container, not to exceed one half-gallon, which may be securely sealed;
- (5) May sell wine manufactured on the licensee's premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee's premises, for off-premises consumption;
- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine;
- (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 7 vessel licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees; and
- (8) May conduct the activities described in paragraphs (1) through (7) at locations other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further that the other locations are properly licensed by the same ownership.

(q) Restaurants, retailers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, and condominium hotels licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, and class 15 shall maintain at all times liquor liability insurance coverage in an amount of \$1,000,000. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

~~[(q)]~~ (r) It shall be unlawful for any retail licensee, except a class 10 licensee, to purchase, acquire, or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

~~[(r)]~~ (s) Any provision to the contrary notwithstanding, at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, class 14, class 15, or class 16 to allow a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, class 14, class 15, or class 16 license engaged in meal service.

~~[(s)]~~ (t) Sections 281-57 to 281-60 shall not apply to classes 8 through 10 and 13.

SECTION 2. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

“§281-45 No license issued, when. No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned (except that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the organization's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license), or to any other person not deemed by the commission to be a fit and proper person to have a license;
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually;
- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; [or]
- (4) To an applicant for a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, or class 15 license, unless the applicant for issuance of a license or renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000; or
- [4] (5) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter.”

SECTION 3. Section 281-61, Hawaii Revised Statutes, is amended to read as follows:

“§281-61 Renewals. (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of an application; provided that if:

- (1) Complaints from the public;
- (2) Reports from the commission's investigators; or
- (3) Adjudications of the commission or the liquor control adjudication board,

indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood in which the premises are located, or that noise from the premises or adjacent related outdoor areas such as parking lots or lanais exceed standards contained in state or county noise codes or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commission's approval are taken.

(b) The commission or board, pursuant to section 281-17, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon proper notice to the licensee, and a hearing before the commission pursuant to chapter 91.

(c) The commission or board shall deny renewal of a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, or class 15 license if the applicant for renewal fails to present proof of the liquor liability insurance required by section 281-31(q)."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 178

S.B. NO. 199

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§235-A Credits against income; claim limitation.** (a) Notwithstanding any law to the contrary providing for a tax credit that may be claimed against a taxpayer's tax liability under section 235-110.51, 235-110.9, 241-4.8, or 431:7-209 for taxable years beginning on or after January 1, 2009, and ending before January 1, 2011, no claim for these tax credits shall exceed eighty per cent of the taxpayer's tax liability for the taxable year in which the credit is claimed, and any tax credits claimed shall not result in any credit carryovers.

(b) This section shall apply to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009."

SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9[;] for investments made before May 1, 2009;
- (2) Allocations of net operating loss pursuant to section 235-111.5;

- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.”

SECTION 3. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after:

- (1) December 31, 1987, the applicable rate shall be three per cent;
- (2) December 31, 1988, ~~and thereafter,~~ the applicable rate shall be four per cent[-];
- (3) December 31, 2008, the applicable rate shall be zero per cent; and
- (4) December 31, 2009, and thereafter, the applicable rate shall be four per cent.

For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.”

SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

**“§235-110.9 High technology business investment tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a high technology business investment tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed. The tax credit shall be as follows:

- (1) In the year the investment was made, thirty-five per cent;
- (2) In the first year following the year in which the investment was made, twenty-five per cent;
- (3) In the second year following the investment, twenty per cent;
- (4) In the third year following the investment, ten per cent; and
- (5) In the fourth year following the investment, ten per cent;

of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit in the year the investment was made, \$700,000; in the first year following the year in which the investment was made, \$500,000; in the second year following the year in which the investment was made, \$400,000; in the third year following the year in which the investment was made, \$200,000; and in the fourth year following the year in which the investment was made, \$200,000.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter. By accepting an investment for which the credit allowed under this section may be claimed, a qualified high technology business consents to the public disclosure of the qualified high technology business' name and status as a beneficiary of the credit under this section.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability for any of the five years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. Every claim, including amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) If at the close of any taxable year in the five-year period in subsection (a):

- (1) The business no longer qualifies as a qualified high technology business;
- (2) The business or an interest in the business has been sold by the taxpayer investing in the qualified high technology business; or
- (3) The taxpayer has withdrawn the taxpayer's investment wholly or partially from the qualified high technology business;

the credit claimed under this section shall be recaptured. The recapture shall be equal to ten per cent of the amount of the total tax credit claimed under this section in the preceding two taxable years. The amount of the credit recaptured shall apply only to the investment in the particular qualified high technology business that meets the requirements of paragraph (1), (2), or (3). The recapture provisions of this subsection shall not apply to a tax credit claimed for a qualified high technology business that does not fall within the provisions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(e) Every taxpayer, before March 31 of each year in which an investment in a qualified high technology business was made in the previous taxable year, shall submit a written, certified statement to the director of taxation identifying:

- (1) Qualified investments, if any, expended in the previous taxable year; and
  - (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.
- (f) The department shall:
- (1) Maintain records of the names and addresses of the taxpayers claiming the credits under this section and the total amount of the qualified investment costs upon which the tax credit is based;
  - (2) Verify the nature and amount of the qualifying investments;

- (3) Total all qualifying and cumulative investments that the department certifies; and
- (4) Certify the amount of the tax credit for each taxable year and cumulative amount of the tax credit.

Upon each determination made under this subsection, the department shall issue a certificate to the taxpayer verifying information submitted to the department, including qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department.

The director of taxation may assess and collect a fee to offset the costs of certifying tax credits claims under this section. All fees collected under this section shall be deposited into the tax administration special fund established under section 235-20.5.

(g) As used in this section:

"Investment tax credit allocation ratio" means, with respect to a taxpayer that has made an investment in a qualified high technology business, the ratio of:

- (1) The amount of the credit under this section that is, or is to be, received by or allocated to the taxpayer over the life of the investment, as a result of the investment; to
- (2) The amount of the investment in the qualified high technology business.

"Qualified high technology business" means a business, employing or owning capital or property, or maintaining an office, in this State; provided that:

- (1) More than fifty per cent of its total business activities are qualified research; and provided further that the business conducts more than seventy-five per cent of its qualified research in this State; or
- (2) More than seventy-five per cent of its gross income is derived from qualified research; and provided further that this income is received from:
  - (A) Products sold from, manufactured in, or produced in this State; or
  - (B) Services performed in this State.

"Qualified research" means the same as defined in section 235-7.3.

(h) Common law principles, including the doctrine of economic substance and business purpose, shall apply to any investment. There exists a presumption that a transaction satisfies the doctrine of economic substance and business purpose to the extent that the special allocation of the high technology business tax credit has an investment tax credit ratio of 1.5 or less of credit for every dollar invested.

Transactions for which an investment tax credit allocation ratio greater than 1.5 but not more than 2.0 of credit for every dollar invested and claimed may be reviewed by the department for applicable doctrines of economic substance and business purpose.

Businesses claiming a tax credit for transactions with investment tax credit allocation ratios greater than 2.0 of credit for every dollar invested shall substantiate economic merit and business purpose consistent with this section.

(i) For investments made on or after May 1, 2009, notwithstanding any other law to the contrary, no allocations, special or otherwise, of credits under this section may exceed the amount of the investment made by the taxpayer ultimately claiming this credit; and investment tax credit allocation ratios greater

than 1.0 of credit for every dollar invested shall not be allowed. In addition, the credit shall be allowed only in accordance with subsection (a).

(j) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.

~~[(+)]~~ (k) This section shall not apply to taxable years beginning after December 31, 2010.”

SECTION 5. Section 241-4.5, Hawaii Revised Statutes, is amended to read as follows:

**~~[[§241-4.5]] Capital goods excise tax credit.~~** The capital goods excise tax credit provided under section 235-110.7 shall be operative for this chapter after December 31, 1987[-]; provided that the capital goods excise tax credit shall be inoperative after December 31, 2008, and before January 1, 2010.”

SECTION 6. Section 241-4.8, Hawaii Revised Statutes, is amended to read as follows:

**~~[[§241-4.8]] High technology business investment tax credit.~~** (a) The high technology business investment tax credit provided under section 235-110.9 shall be operative for this chapter on July 1, 1999.

(b) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.”

SECTION 7. Section 431:7-209, Hawaii Revised Statutes, is amended to read as follows:

**~~[[§431:7-209]] High technology business investment tax credit.~~** (a) The high technology business investment tax credit provided under section 235-110.9 shall be operative for this chapter on July 1, 1999.

(b) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.”

SECTION 8. In codifying the new section added by section 1 of this Act, the revisor of statutes shall substitute the appropriate section number for the letter used in designating the new section in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval, and shall apply to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## A Bill for an Act Relating to Torts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's design professional firms engaged in work on highway projects are in a unique position compared to others involved in highway projects. The role of design professionals is minimal in scope, time, and economic benefit. The scope of the design professional's work is limited to the initial design of the highway, which is minimal in contrast to the construction and maintenance of highways. The time that design professionals are involved is also minimal and usually limited to the initial planning stage of the project. On the other hand, highway construction typically takes years and maintenance extends over many decades. Design professionals generally have no control over subsequent construction and future maintenance activities that occur long after their work has ended. Construction and maintenance costs similarly greatly exceed design costs. For virtually all small design firms, the liability risk far exceeds the financial compensation for highway projects. This Act recognizes these unique factors and affords appropriate relief.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§663- Design professional liability; highways.** (a) Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case involving tort claims relating to the design, construction, and maintenance of highways, where a design professional is determined to be a joint tortfeasor along with one or more other joint tortfeasors, and the degree of negligence of the design professional is ten per cent or less, including the vicarious liability of the design professional for the negligent acts or omissions of the officers and employees of the design professional, the liability of the design professional for more than the design professional's pro rata share of negligence shall not exceed the available policy limits of the design professional's professional liability coverage; provided that one of the following applies:

- (1) The contract amount for design professional services relating to the tort claim is \$500,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate; or
- (2) The contract amount for design professional services relating to the tort claim is \$1,000,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (b) This section shall not apply to any design professional with a gross annual revenue of \$10,000,000 or more during any of the three calendar years immediately preceding the effective date of the contract for design professional services relating to the tort claim. Information produced pursuant to this section relating to gross revenue shall be confidential and used only for purposes of this section unless otherwise ordered by the court.
- (c) For purposes of this section:



“Available policy limits” means the remaining occurrence or aggregate policy limits available after reduction for prior claim payments made under the applicable professional liability insurance policy.

“Contract amount” means the maximum charges permitted under the contract; provided that if two or more design professional firms share in a contract, the contract amount shall be the share of maximum charges permitted for the design professional against which the claim is asserted.

“Design professional” means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464.”

SECTION 3. This Act shall apply prospectively only and shall not affect events, acts, or omissions that occur, rights that vest or mature, or proceedings begun, before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 180**

S.B. NO. 603

A Bill for an Act Relating to Public Utilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that competition in the telecommunications market is robust. Consumers have many choices when deciding how to communicate: traditional land-line telephony, voice over internet protocol, and wireless phone service.

The legislature further finds that advances in voice over internet protocol and wireless phone services make these technologies viable substitutes for traditional land line telephony. These services currently provide 9-1-1 capability, number portability, reliable service, and extensive network coverage. Even though some federal and state regulators feel that these new technologies, especially wireless phone service, can never replace the traditional land line phone for casual and emergency communication needs, many consumers do not share this view. According to the Federal Communications Commission, the number of switched access lines of Hawaii's incumbent local exchange carrier decreased from 735,459 in 2001 to only 541,030 in 2007. The number of wireless subscribers in Hawaii, however, increased from 595,721 to 1,096,181 over the same period. While some consumers subscribing to wireless phone service maintain their land line or wired phone service, other consumers are subscribing to wireless service as a true alternative and thus are disconnecting their land line service. Hawaii is not unique in this respect: the telecommunications market trend is similar across the United States.

The legislature further finds that competitive local exchange carriers, currently enjoying a non-competitive switched access market, should adapt to the changing telecommunications market. When the Telecommunications Act

of 1996 opened up competition in the telecommunications market, it forced incumbent local exchange carriers to wholesale their services to competitive local exchange carriers so that they (the competitive local exchange carriers) in turn, could re-sell these services to consumers. The Act was designed to open up competition by allowing other carriers into the market, in hopes that these other carriers would eventually develop their own networks. After twelve years of competition, competitive local exchange carriers are still heavily reliant upon the incumbent local exchange carriers for wholesale services. This regulatory scheme has impeded growth of the incumbent carriers, as competition from other telecommunications and information services have eroded market share and revenue. Thus, highly regulated switched access services will continue to saddle incumbent local exchange carriers from competing with other services, while competitive local exchange carriers continue to rely on the re-sale of the incumbent's network services.

The legislature further finds that competition in Hawaii's telecommunications market is not a level playing field; the incumbent local exchange carrier is highly regulated, while other telecommunications service providers do not share the same level of regulation. Although the incumbent local exchange carrier continues to maintain the majority of lines, this dominance of market share does not take into account the meteoric rise of wireless subscribers and voice over internet protocol service. To determine competition in a modern telecommunications market, all types of services need to be evaluated for their effects in the marketplace. It will also force competitive local exchange carriers to adapt their strategies in a competitive environment.

The purpose of this Act is to require the public utilities commission to:

- (1) Classify the State's local exchange intrastate services as fully competitive with respect to certain classifications of services; and
- (2) Require telecommunications carriers to file their rates, fares, charges, and bundled service offerings for information purposes only.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§269- Local exchange intrastate services; fully competitive.** (a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat the State's local exchange intrastate services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not charge a higher rate for any retail telecommunications service than the rate for the same service included in the telecommunications carrier's filed tariff. All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.

(b) This section shall apply to retail rates charged for service to end-user consumers only and shall not apply to wholesale rates charged for services provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider.

(c) Nothing herein shall modify any requirements of a telecommunications carrier to provide lifeline telephone service, comply with carrier of last resort obligations, or comply with applicable service quality standards.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 181

H.B. NO. 1550

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$4,000 in the case of:
  - (A) A joint return as provided by section 235-93; or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) \$2,920 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) \$2,000 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) \$2,000 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this [State.] state. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this [State.] state.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in section 163(d)(4)(B) (defining net investment income to exclude dividends) shall not be operative for the purposes of this chapter.

(e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(f) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to property on Indian reservations in section 168(j) and special allowance for certain property acquired after September 10, 2001, and before January 1, 2005 (including the extension of the qualifying aircraft placed in service before January 1, 2006), in section 168(k) shall not be operative for purposes of this chapter.

(g) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(2);
- (3) Defining section 179 property to include computer software in section 179(d)(1);
- (4) Inflation adjustments in section 179(b)(5); and
- (5) Irrevocable election in section 179(c)(2);

shall not be operative for the purposes of this chapter.

(h) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(i) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

(j) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

(k) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(l) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(m) In administering section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state employee retirement system shall not be treated as a rollover for purposes of section 403(b)(8)(A) of the Internal Revenue Code, and such funds shall be subject to income tax under this chapter.

(n) In administering section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state employee retirement system shall not be treated as a rollover for purposes of section 457(e)(16)(A) of the Internal Revenue Code and such funds shall be subject to income tax under this chapter.

~~[(m)]~~ (o) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(n)]~~ (p) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(o)]~~ (q) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

~~[(p)]~~ (r) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(q)]~~ (s) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(r)]~~ (t) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that section 529(c)(6) shall not be operative.

~~[(s)]~~ (u) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009, and shall apply to taxable years beginning after December 31, 2008.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 182

S.B. NO. 1673

A Bill for an Act Relating to the Hawaii Health Systems Corporation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Hawaii health systems corporation is the fourth largest public hospital system in the nation and operates public health care facilities that provide essential safety-net hospital and long-term care services throughout the State. The legislature further finds that the continued financial challenges faced by the Hawaii health systems corporation and the State pose a risk to the public health care services provided by the Hawaii health systems corporation. In addition, these factors hinder efforts to improve the quality of health care services provided to the public.

Prominent national studies have demonstrated that many public hospital systems have struggled financially for a variety of reasons, including providing a disproportionate level of uncompensated and under-compensated care as compared to private hospital systems and because of constraints and inefficiencies inherent in operating as a governmental agency. As a result, an increasing number of public hospitals have converted to non-public status.

While the legislature recognizes the fact that the system of public hospitals in the State will continue to require state subsidies, the legislature finds that allowing the operations of the regional systems of the Hawaii health systems corporation and their facilities to transition into a corporation or corporations,

while providing support during the transition, will improve the operations and efficiencies of the Hawaii health systems corporation and benefit the health care of the people of the State of Hawaii. The legislature further finds that it is essential that this transition be an option available to the various regional systems and facilities of the Hawaii health systems corporation as the change needs to be carefully evaluated by the community representatives that comprise the regional system boards. Furthermore, the legislature finds that the Hawaii health systems corporation must stay intact in order to provide central support services to the regional systems and facilities seeking to remain a part of this valuable state agency.

## PART I

SECTION 2. Section 323F-31, Hawaii Revised Statutes, is amended to read as follows:

**“§323F-31 Maintenance of services.** (a) ~~[The corporation and each regional system board shall notify the legislature of any planned substantial reduction or elimination of direct patient care services.]~~ No planned substantial reduction or elimination of direct patient care services at any facility shall be undertaken unless all of the following requirements are met:

- (1) An initial determination is made by the regional chief executive officer as to critical and emergency services which shall not be subject to reduction or elimination pursuant to this section;
  - (2) The plan of the facility to substantially reduce or eliminate any direct patient care services at the health facility shall first be presented to the regional system board for its approval;
  - (3) Subsequent to the requisite regional system board approval, the regional chief executive officer shall present the plan to the community in which the facility is located, at a community informational meeting, in order to obtain community input on the plan; and
  - (4) Provided that if the regional system board approves the plan, the plan as approved by the regional system board shall be submitted to the corporation board for ratification.
- (b) ~~[No substantial reduction or elimination of direct patient care services at any facility shall be undertaken by the corporation without the approval of the legislature.]~~ After the community informational meeting, but at least twenty days prior to the implementation of the plan approved by the regional system board, the regional system board shall give notice of implementation of the plan to the governor, senate president, and the speaker of the house of representatives.

(c) ~~[The legislature shall maintain review and oversight authority over the provision of direct patient care services provided at each facility and may intervene to counter or restrict any substantial reduction or elimination of patient care services.]~~ The decision of the regional system board shall be the final decision with respect to the plan. Implementation of the plan shall commence and continue, provided that no legislation is enacted that:

- (1) Requires the reinstatement and continuation of the direct patient care services that are subject to reduction or elimination under the plan; and
- (2) Includes an appropriation of additional moneys sufficient to adequately fund the mandated reinstatement and continuation of the subject direct patient care services.”

## PART II

**SECTION 3. Community hospitals; liabilities prior to July 1, 1996; assumption by department of health; report.** (a) On July 1, 2009, the department of health shall assume the total amount of all liabilities and debts or other obligations of the Hawaii health systems corporation that had been accrued up to June 30, 1996, by the community hospitals while the community hospitals were operating within the division of community hospitals of the department of health. The department of health, with the assistance and cooperation of the Hawaii health systems corporation, shall determine the final amount of the liabilities and debts or other obligations to be transferred to and assumed by the department of health pursuant this subsection.

(b) The department of health shall report to the legislature the details of the total amount of liabilities and debts or other obligations transferred from the Hawaii health systems corporation and assumed by the department pursuant to subsection (a) no later than December 1, 2009.

**SECTION 4.** Section 88-125, Hawaii Revised Statutes, is amended to read as follows:

**“§88-125 Contributions by certain state agencies.** (a) Each of the departments and agencies hereinafter described ~~[and]~~, the office of Hawaiian affairs, and the Hawaii health systems corporation shall reimburse the State for the respective amounts payable by the State to cover the liability of the State to the various funds of the system on account of the employees in ~~[such]~~ the departments and agencies ~~[and]~~, the trustees of the office of Hawaiian affairs~~[-]~~, and the employees of the Hawaii health systems corporation. This provision shall apply to any department or agency of the State ~~[which]~~ that is authorized by law to fix, regulate, and collect rents, rates, fees, or charges of any nature. ~~[The provisions herein]~~ This subsection shall not apply as to rental units receiving federal subsidies until approval has been obtained from the appropriate federal agency.

(b) Whenever any department or agency of the State or the Hawaii health systems corporation receives federal-aid funds ~~[which]~~ that may be expended for the purpose of covering the liability of the State to the various funds of the system, the department or agency or the Hawaii health systems corporation shall set aside a portion of these funds sufficient to cover the amount of the State's liability to the various funds of the system on account of the employees in the department or agency or the Hawaii health systems corporation whose compensation is paid in whole or part from federal funds.

(c) The amount payable by each department or agency of the State, ~~[or]~~ the office of Hawaiian affairs, or the Hawaii health systems corporation, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, ~~[or]~~ trustees of the office of Hawaiian affairs, or the Hawaii health systems corporation who are members of the system in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, the Hawaii health systems corporation, or any department or agency having control of its own funds ~~[shall]~~, upon information furnished by the department of budget and finance, shall issue a check for the proper amount to the director of finance, charging the same to the appropriate fund. The director of finance shall place all such sums to the credit of the State as part payment of the State's contributions to the various funds of the system.



(d) With respect to the Hawaii health systems corporation only, this section shall be operative with respect to costs accrued beginning July 1, 1996."

### PART III

SECTION 5. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§89- Negotiating authority; Hawaii health systems corporation.** Notwithstanding any law to the contrary, including section 89-6(d), the Hawaii health systems corporation or any of the regional boards, as a sole employer negotiator, may negotiate with the exclusive representative of any appropriate bargaining unit and execute memorandums of understanding for employees under its control to alter any existing or new collective bargaining agreement on any item or items subject to section 89-9."

### PART IV

SECTION 6. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§323F- Criminal history record checks.** (a) The corporation may request a criminal history record check of persons who are employed or seeking employment, or are current or prospective contractors, providers, or volunteers in any of the corporation's health facilities, in accordance with section 846-2.7.

(b) For the purpose of this section, the criminal history record check shall be performed by the Hawaii criminal justice data center. The Hawaii criminal justice data center may assess providers and contractors a reasonable fee for criminal history record checks performed. Providers and contractors shall be responsible for payment to the Hawaii criminal justice data center of the fee for the criminal history record checks.

(c) Any person who is a current or prospective member of the corporation board or regional system board; employed or who seeks employment with the corporation; or is a current or prospective contractor, provider, or volunteer in any of the corporation's health facilities may be required to provide to the corporation:

- (1) Personal identifying information including name, social security number, and date of birth;
- (2) Written consent for the corporation to obtain criminal history record check information for verification; and
- (3) Written consent to be fingerprinted for the purpose of a criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used by the corporation exclusively for the purposes of this section.

(d) Any inquiry into or consideration of the criminal history record of an employee or prospective employee of the corporation shall be limited to that which is allowed under section 378-2.5 or required under federal law.

(e) A current or prospective contractor, provider, or volunteer or a current or prospective member of the corporation board or regional system board who has been convicted of a criminal offense for which incarceration is a sentencing option, may be terminated, released, or not used. This action shall be based on the corporation's analysis of whether the nature and circumstances of the crime may pose a risk to the health, safety, or well-being of patients, residents, and organizations in its health facilities.

(f) For the purposes of this section:

“Contractor” means any individual who enters into a contract or agreement to provide services to the patients or residents in any of the corporation’s health facilities.

“Criminal history record check” means an examination of an individual’s criminal history records by means including fingerprint analysis and name inquiry into state and national criminal history record files.

“Provider” means any individual who currently provides or intends to enter into a contract or agreement to provide services to the patients or residents in any of the corporation’s health facilities, or is a student in any program at any of the corporation’s health facilities.”

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;

- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided ~~[as provided by]~~ pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (Title 42 United States Code Section 1396n(c)), or under any other applicable section or sections

- of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
  - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
  - (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
  - [(27)] The department of commerce and consumer affairs on:
    - (A) Each principal of every non-corporate applicant for a money transmitter license; and
    - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license, as provided by section 489D-9; ~~and~~
  - (28) The Hawaii health systems corporation on:
    - (A) Employees;
    - (B) Applicants seeking employment;
    - (C) Current or prospective members of the corporation board or regional system board; or
    - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F- ; and
  - [(28)] (29) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

## PART V

SECTION 8. Chapter 323F, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§323F- Transition of Hawaii health systems regional system or health facility to a new entity.** (a) Notwithstanding any other law to the contrary, including but not limited to section 27-1 and chapter 171, any of the regional systems or individual facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity in any form recognized under the laws of the State, including but not limited to:

- (1) A non-profit corporation;
- (2) A for-profit corporation;
- (3) A municipal facility;
- (4) A public benefit corporation; or
- (5) Any two or more of the entities in paragraphs (1) through (4).

A transition shall occur through the sale, lease, or transfer of all or substantially all of the assets of the facility or regional system, except for real property which shall only be transferred by lease. Any transition shall comply with chapter 323D.

(b) A transition shall only occur upon approval of the appropriate regional system board in the case of a regional system or individual facility transition, or upon approval of the regional system boards and the corporation in the case of the transition of the entire corporation. Any transition shall be subject

to legal review by the attorney general who shall approve the transition if satisfied that the transition conforms to all applicable laws, subject to the review of the director of the department of budget and finance who shall approve the transition if it conforms to all applicable financing procedures, and subject to the governor's approval. In addition the transition shall be subject to the following terms and conditions:

- (1) All proceeds from the sale, lease, or transfer of assets shall be used for health care services in the respective regional system or facility, except that real property shall only be transferred by lease;
- (2) Any and all liabilities of a regional system or facility transitioning into a new entity that were transferred to the Hawaii health systems corporation upon its creation by Act 262, Session Laws of Hawaii 1996, and all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State; and
- (3) During the period of transition:
  - (A) The State shall continue to fund the provision of health care services provided for by the regional system or individual facility; and
  - (B) All applicable provisions of this chapter shall continue to apply.

Upon the completion of the transition of all the facilities in a regional system to a new entity, the regional system board for that regional system shall terminate; provided that if not all of a regional system's facilities are transitioned to a new entity, the existing regional system board shall not terminate but shall continue to retain jurisdiction over those facilities remaining in the regional system.

**§323F- Regional system board; community hospitals; community health centers; collaboration.** Each regional system board and each community hospital under the jurisdiction of the corporation shall collaborate with community health centers within their respective geographic jurisdictions to maximize funding from the state and federal governments to:

- (1) Maximize reimbursement for health care services provided;
- (2) Acquire funds for capital investment;
- (3) Provide expanded hours of service; and
- (4) Ensure the provision of the appropriate level of care to the community served by each community health center."

SECTION 9. Section 323F-3, Hawaii Revised Statutes, is amended to read as follows:

**"§323F-3 Corporation board.** (a) The corporation shall be governed by a ~~[fifteen-member]~~ twelve-member board of directors that shall carry out the duties and responsibilities of the corporation other than those duties and responsibilities relating to the establishment of any captive insurance company pursuant to section ~~[[323F-7(c)(20)]]~~ and the operation thereof.

(b) ~~[Twelve]~~ The members of the corporation board shall be appointed as follows:

- (1) ~~[Two members from regional system I who reside in the city and county of Honolulu shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007;~~

- ~~provided that this list shall not include physicians;]~~ The director of health as an ex-officio, non-voting member;
- (2) ~~[Two members from regional system II who reside in the county of Kauai shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;]~~ The five regional chief executive officers as ex-officio, voting members; and
  - (3) ~~[Two members from regional system III who reside in the county of Maui shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;]~~ Two members who reside in the county of Maui who shall be appointed by the Maui regional system board;
  - (4) ~~[Two members from regional system IV]~~ One member who [reside] resides in the eastern section of the county of Hawaii who shall be appointed by [the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;] the East Hawaii regional system board;
  - (5) ~~[Two members from regional system V]~~ One member who [reside] resides in the western section of the county of Hawaii who shall be appointed by the [governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians; and'] West Hawaii regional system board;
  - (6) ~~[Two additional members who reside in the State shall be appointed by the governor.]~~ One member who resides on the island of Kauai who shall be appointed by the Kauai regional system board; and
  - (7) One member who resides on the island of Oahu who shall be appointed by the Oahu regional system board.

~~[The thirteenth and fourteenth members, who shall serve as voting members, shall be physicians with active medical staff privileges at one of the corporation's public health facilities. The physician members shall each serve a term of two years. The initial physician members shall be from regional system II, and subsequent physician members shall come from regional systems IV, III, and V respectively. The physician member positions shall continue to rotate in this order. The physician members shall be appointed to the corporation board by a two-thirds majority vote of the corporation board from a list of qualified nominees submitted by the public health facility management advisory committees or by any regional system board. If for any reason a physician member is unable to serve a full term, the remainder of that term shall be filled by a physician from the same regional system.~~

~~The fifteenth member shall be the director of health or the director's designee, who shall serve as an ex-officio, voting member.~~

~~Appointments to the corporation board, with the exception of the chairperson of the executive public health facility management advisory committee~~

~~and the regional physician member, shall be made by the governor, subject to confirmation by the senate pursuant to section 26-34.]~~

The appointed board members shall serve for a term of four years; provided that the ~~[first member appointed from each regional system shall be appointed for a term of two years.]~~ terms of the initial appointments shall be as follows: one of the initial members from the county of Maui shall be appointed to serve a term of two years and the other shall be appointed to serve a term of four years; the initial member from East Hawaii shall be appointed to serve a term of two years; the initial member from West Hawaii shall be appointed to serve a term of four years; the initial member from the island of Kauai shall be appointed to serve a term of two years; and the initial member from the island of Oahu shall be appointed to serve a term of four years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members. Appointments to the corporation board shall be as representative as possible of the system's stakeholders as outlined in this subsection.

(c) The selection, appointment, and confirmation of any nominee shall be based on ensuring that board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the medical, business, management, law, finance, and health sectors, and patients or consumers. Members of the board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any member of the board may be removed for cause ~~[by the governor or for cause]~~ by vote of a two-thirds majority of the board's members then in office. For purposes of this section, cause shall include without limitation:

- (1) Malfeasance in office;
- (2) Failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-2; or
- (4) Any other cause that may render a member incapable or unfit to discharge the duties required under this chapter.

Filing nomination papers for elective office or appointment to elective office, or conviction of a felony consistent with section 831-3.1, shall automatically and immediately disqualify a board member from office."

SECTION 10. Section 323F-3.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Each regional system board shall ~~[be]~~:

- (1) Be responsible for local governance, operations, and administration of the delivery of services in its respective regional system as set forth in this chapter and as further delegated by the corporation~~[- Each regional system board shall include];~~
- (2) Include medical and health care providers and professionals, consumers, and knowledgeable individuals in other appropriate areas, such as business, finance, and law; provided that no more than three members of the regional system board shall be physicians~~[- Each regional system board shall be];~~
- (3) Be as balanced and representative of the community stakeholders as possible~~[-]; and~~
- (4) Have the powers, duties, and responsibilities that are specific to the regional system board as provided in this chapter."

SECTION 11. Section 323F-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All business of the corporation board and each regional system board shall be conducted at a regular or special meeting at which a quorum is present, consisting of at least a majority of the directors then in office. The corporation board and each regional system board shall adopt procedural rules for meetings, not subject to chapter 91, that shall include provisions for meetings via electronic and telephonic communications and other methods that allow the boards to conduct business in a timely and efficient manner. Any action of the corporation board or each regional system board shall require the affirmative vote of a majority of those present and voting at the meeting; except that a vote of two-thirds of the entire membership of the respective board then in office shall be required for any of the following actions:

- (1) Removal by the corporation board or respective regional system board of one of its members;
- (2) Amendment by the corporation or a regional system board of its bylaws;
- (3) Hiring or removing ~~[the chief executive officer of the corporation or]~~ a regional chief executive officer;
- (4) Filling of vacancies on a board; and
- (5) Any other actions as provided by the corporation or regional system board bylaws~~[-], except the hiring or removing of the chief executive officer of the corporation.~~”

SECTION 12. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (c) and (d) to read as follows:

“(c) Notwithstanding any other law to the contrary, the corporation and any of the regional system boards shall exercise the following duties and powers:

- (1) Developing corporation-wide policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91; provided that each regional system board shall be responsible for its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the public health facilities within its own regional system consistent with ~~[corporate]~~ corporation policies;
- (2) Evaluating the need for additional health facilities and services; provided that each regional system board shall be responsible for the evaluation within its own regional system;
- (3) Entering into and performing any contracts, leases, cooperative agreements, partnerships, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms the corporation, or regional system boards, may deem appropriate, with either:
  - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
  - (B) Any person, firm, association, partnership, or corporation, whether operated on a for-profit or not-for-profit basis; provided that the transaction furthers the public interest; and provided further that if any dispute arises between any contract, lease, cooperative agreement, partnership, or other transaction entered into by the corporation and a regional system board with regard



to matters solely within that regional system, after July 1, 2007, the contract, lease, cooperative agreement, partnership, or other transaction entered into by the regional system board shall prevail; and provided further that such agreements are consistent with corporation policies;

- (4) Conducting activities and entering into business relationships as the corporation board, or any regional system board, deems necessary or appropriate, including but not limited to:
  - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation, any regional system board, or jointly with others;
  - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
  - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation or a regional system board to abrogate any responsibility or obligation under paragraph (15);

provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;
- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any powers of the corporation or regional system boards;
- (7) Preparing and executing all corporation-wide budgets, policies, and procedures or any regional system budgets, policies, and procedures; provided that the regional system boards shall submit their regional and facility budgets to the corporation to be consolidated into a corporation-wide budget for purposes of corporation-wide planning and appropriation requests. Regional system and facility budgets shall be received by the corporation and shall be included in the corporation-wide budget upon submittal to the corporation;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91; provided that the duty and power of the corporation board shall be limited to approving the rates and charges developed by the regional system boards for the regional system's facilities and services. Rates and charges may vary among regional systems and facilities and may be consolidated with the rates of other regional systems into one charge master. Third-party payer contracts may be negotiated at the corporation-wide level with

- input from the regional systems, taking into consideration the rates set by the regional system boards. For purposes of securing revenue bonds, the corporation or regional system board may covenant to set, and if necessary increase, rates and charges as needed to pay debt service and related obligations plus a coverage factor;
- (9) Developing a corporation-wide hospital system that is subject to chapters 76 and 89; provided that employment of regional system and facility personnel shall be the responsibility of the regional system boards pursuant to corporation-wide policies and procedures, applicable laws, rules, regulations, and collective bargaining agreements;
  - (10) Developing the corporation's corporation-wide capital and strategic plans or any regional system board's capital and strategic plans; provided that each regional system board shall be responsible for development of capital and strategic plans in its own regional system that shall be consistent with, and incorporated into, the overall corporation-wide plans; and provided further that the corporation and each regional system board shall be entitled to undertake the acquisition, construction, and improvement of property, facilities, and equipment to carry out these capital and strategic plans;
  - (11) Suing and being sued; provided that only the corporation may sue or be sued; and provided further that the corporation and regional system boards shall enjoy the same sovereign immunity available to the State;
  - (12) Making and altering corporation board and regional system board bylaws for its organization and management without regard to chapter 91 and consistent with this chapter; provided that each regional system board shall be responsible for the final approval of its regional system board bylaws;
  - (13) Adopting rules without regard to chapter 91 governing the exercise of the corporation's or regional system boards' powers and the fulfillment of its purpose under this chapter;
  - (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation, regional system boards, and chief executive officers to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds; provided that the corporation board shall delegate to a regional system board its authority to enter into and execute contracts or agreements relating to matters exclusively affecting that regional system; provided further that a regional system board shall exercise this power consistent with corporation-wide policies; and provided further that contracts or agreements executed by a regional system board shall encumber only the regional subaccounts of that regional system board;
  - (15) Issuing revenue bonds up to \$100,000,000 subject to the approval of the governor or the director of finance; provided that:
    - (A) All revenue bonds shall be issued pursuant to part III, chapter 39;
    - (B) The corporation and any regional system board shall have the power to issue revenue bonds in any amount without regard to any limitation in chapter 39; and
    - (C) The corporation shall have the power to incur debt, including the issuance of revenue bonds in any amount, and the regional

- system boards shall have the power to issue revenue bonds in any amount upon approval by the corporation board;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation or any regional system board;
  - (17) Pledging or assigning all or any part of the receipts, revenues, and other financial assets of the corporation or the regional system boards for purposes of meeting or securing bond or health systems liabilities; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system. Any pledge or assignment by the corporation or any regional system board to secure revenue bonds or health system liabilities shall be valid and binding in accordance with its terms against the pledgor, creditors, and all others asserting rights thereto from the time the pledge or assignment is made, without the need of physical delivery, recordation, filing, or further act. The corporation shall not take or omit to take any act that would interfere with, impair, or adversely affect any pledge ~~[of]~~ or assignment by a regional system board pursuant to this chapter. In connection with issuing revenue bonds or related obligations, consistent with corporation policies and procedures, any regional system board may make such other covenants, binding on the regional system board and the corporation, that the regional system board determines to be necessary or appropriate to establish and maintain security for the revenue bonds or related obligations;
  - (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation; provided that:
    - (A) Regional system boards shall have custodial control over facilities and physical assets in their respective regional systems. A regional system board may own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or ~~[mix,]~~ mixed, tangible or intangible, and of any interest therein, other than property owned or controlled by the corporation, in the name of the regional system board; provided further that a regional system board shall be subject to section 323F-3.5; and
    - (B) Each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system;
  - (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation or any regional system board; provided that the corporation or any regional system board legally holds or controls the property in its own name; provided further that other than to secure revenue bonds and related obligations and agents, and to transition into a new entity, the corporation or any regional system board shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property; and provided further that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system, and con-

- trol over such property shall be delegated to each regional system board; provided further that this paragraph shall not be construed to authorize the sale, pledge, or mortgage of real property under the control of the corporation or a regional system board.
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance; provided that only the corporation shall have the power to create captive insurers to benefit public health facilities and operations in all regional systems; and provided further that a regional system board may purchase insurance for its regional system in collaboration with the other regional systems and the corporation until captive coverage is provided by the corporation;
  - (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
  - (22) Depositing any moneys of the corporation or any regional system board in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation[§] or any regional system board; provided that regional system boards may deposit moneys in banking institutions pursuant to corporation-wide guidelines established by the corporation board;
  - (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof; provided that the regional system boards shall be responsible for contracting for and accepting any gifts, grants, loans, property, or other aid if intended to benefit the public health facilities and operations exclusively in their respective regional systems; and provided further that all contracting for or acceptance of gifts, grants, loans, property, or other aid shall be consistent with corporation-wide policies established by the corporation board;
  - (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation, partnership, or association through or in the health facilities of the corporation or regional system boards or otherwise; provided that the regional system boards shall be responsible for conducting the activities under this paragraph in their respective regional systems;
  - (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities of the corporation or any regional system board, including but not limited to determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, as determined by the respective regional system board and consistent with ~~[corporate-wide]~~ corporation-wide policies, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility; provided that regional system boards shall be the governing body responsible for all medical staff organization, peer review, and credentialing activities to the extent allowed by law;

- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board or any regional system board; provided that proceeds of bonds and moneys pledged to secure bonds may be invested in obligations permitted by any document that authorizes the issuance or securing of bonds; and provided further that the investment assists the corporation or any regional system board in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board or a regional system board may determine, with or without payment of any interest on the deposit, including without limitation time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation or a regional system board and may issue indemnity bonds or may pledge securities as may be required by the corporation or regional system board; provided that regional system boards may exercise the powers under this subsection with respect to financial assets of the regional system consistent with corporation-wide policies; and
- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation or regional system board and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation or regional system board, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State, including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs or the regional system boards' programs, and contracting for the provision of services to or on behalf of the State; provided that the regional system boards shall be responsible for entering into agreements to provide goods, services, and facilities in support of programs in their respective regional systems consistent with corporation-wide policies;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation or regional system board deems appropriate, the exemption from federal income taxation of interest on the corporation's or regional system boards' bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, and subject to management

and financial legislative audits; provided that the regional system boards shall be responsible for developing internal policies and procedures for each of their regional systems consistent with the corporation's policies and procedures; and further provided that:

- (A) The regional system boards and the ~~[corporate]~~ corporation board shall enjoy the exemption under section 103-53(e);
  - (B) The regional system boards shall enjoy the exemption under chapter 103D; and
  - (C) The corporation shall be subject to chapter 103D;
- (31) Authorizing and establishing positions; provided that regional system boards shall be responsible for hiring and firing regional and facility personnel consistent with corporation policies, except a regional chief executive officer ~~[and regional chief financial officer]~~ shall only be hired or dismissed upon the approval of the regional system board ~~[and the corporation board]~~ as further set forth in section 323F-8.5;
- (32) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter; provided that the regional system boards shall be responsible for having and exercising all powers and rights with respect to matters in their regional systems consistent with the law; and
- (33) Each regional system, through its regional system board, shall:
- (A) Develop policies and procedures necessary or appropriate to plan, operate, manage, and control the day-to-day operations of facilities within the regional system that are consistent with corporation-wide policies;
  - (B) Exercise custodial control over and use of all assets of the corporation that are located in the regional system pursuant to this chapter; and
  - (C) Expend funds within its approved regional system budget and expend additional funds in excess of its approved regional system budget upon approval of the corporation board.
- (d) Each regional system board shall not be subject to chapters 36 to 38, 40, 41D, and 103D as well as part I of chapter 92 and shall enjoy the exemptions contained in sections 102-2 and 103-53(e), except as otherwise provided in this chapter. The corporation shall not be subject to chapters 36 to 38, 40, and 41D, as well as part I of chapter 92, and shall enjoy the exemptions contained in sections 102-2 and 103-53(e)~~[-]~~; provided that the exemption provided under this subsection to chapter 37D shall only apply to financing agreements of \$5,000,000 or less; provided further that the aggregate value of financing agreements per fiscal year shall not exceed \$25,000,000.

SECTION 13. Section 323F-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The corporation board may appoint, ~~[exempt from chapter 76 and section 26-35(a)(4),]~~ by majority vote of its entire membership, a chief executive officer of the corporation whose salary shall be set by the corporation board~~[-]~~ and who shall be exempt from chapter 76 and section 26-35(a)(4). The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76 and 89, to work directly for the chief executive officer and the corporate board.

(b) The corporation board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

The discharge of the chief executive officer shall require a majority vote of the entire membership of the corporation board."

SECTION 14. Section 323F-8.5, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**"[§323F-8.5] Regional chief executive officer; exempt position.** (a) Upon establishment~~], and until December 31, 2008]~~, a regional system board may appoint a regional chief executive officer ~~[and regional chief financial officer]~~ whose salary shall be set by the corresponding regional system board and may discharge a regional chief executive officer ~~[or regional chief financial officer for cause, consistent with subsection (b)]~~; provided that the position shall be exempt from chapter 76 and section 26-35(a)(4). ~~[Effective January 1, 2009, the hiring and firing of the regional chief executive officers shall be subject to approval of both the regional system board and the corporation board.]~~ Each regional chief executive officer may also appoint, as necessary, other personnel, exempt from chapters 76 and 89, to work directly for the regional chief executive officer for the regional system and for the corresponding regional system board.

(b) Any regional system board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel~~]; and provided further that the discharge of a regional chief executive officer shall be limited to the reasons outlined in section 323F-3.5(e) up to December 31, 2008. Effective January 1, 2009, regional chief executive officers and other exempt personnel shall be subject to discipline, including discharge, in accordance with duly executed contracts, laws governing exempt personnel of the State, and regional system policies adopted in accordance with corporate policies]."~~

SECTION 15. Section 323F-22, Hawaii Revised Statutes, is amended to read as follows:

**"§323F-22 Annual audit and report; disclosure of revenue projections~~]; internal performance audit.~~** (a) The corporation shall engage a certified public accountant to conduct an annual audit of its financial affairs, books, and records in accordance with generally accepted accounting principles. The corporation, in consultation with a regional system board, may permit or require a regional system board to retain an audit firm to conduct an independent audit of the regional system. Each regional system board shall submit the results of the annual audit to the corporation board within one hundred twenty days after the close of the regional system board's fiscal year. The corporation shall submit to the governor and the legislature, within one hundred fifty days after the close of the corporation's fiscal year, a report that shall include the audited financial report for that fiscal year for the corporation and each regional system board.

(b) In addition to the submittal of the audit required under subsection (a), the corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session that shall include but not be limited to:

- (1) The projected revenues for each health care facility;
- (2) A list of all proposed capital improvement projects planned for implementation during the following fiscal year; and

- (3) All reports submitted by regional public health facility management advisory committees pursuant to section 323F-10(c).
- (c) The regional system boards shall prepare a report for inclusion with the corporation's annual report and audit.
- (d) There shall be an annual internal audit of the management and operations of the corporation and regions. The corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session on the results of the annual internal audit of the management and operations of the corporation and regions."

## PART VI

SECTION 16. (a) Notwithstanding any law to the contrary, including section 26-34, Hawaii Revised Statutes, the terms of the two members of the Hawaii health systems corporation board appointed by the governor pursuant to section 323F-3(b)(6), Hawaii Revised Statutes, as that provision of law read on the day prior to the effective date of this Act, and the two physician members required to have active medical staff privileges at one of the corporation's health facilities appointed by the governor pursuant to section 323F-3(b), Hawaii Revised Statutes, as that provision of law read on the day prior to the effective date of this Act, shall expire on June 30, 2009.

(b) The Hawaii health systems corporation board, in consultation with the regional system boards, shall implement the board member reduction requirement under section 9 no later than July 1, 2010. Any reduction in membership effectuated by the Hawaii health systems corporation board shall maintain adequate regional representation.

## PART VII

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 20. This Act shall take effect on July 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.



## ACT 183

H.B. NO. 1809

A Bill for an Act Relating to Recycling.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 13, Special Session Laws of Hawaii 2008, addresses the collection, transportation, and recycling of computers, computer printers, computer monitors, and portable computers that are used and discarded in the state.

The legislature finds that a similar comprehensive and convenient television recycling and reuse program, based on shared responsibility among all stakeholders, including manufacturers, consumers, retailers, and government, would ensure that end-of-life televisions are responsibly recycled or disposed of to promote resource conservation.

Additionally, this Act clarifies and amends certain provisions of chapter 339D, Hawaii Revised Statutes, by:

- (1) Deleting the annual sales of “specialized computers” provision for electronic device manufacturers;
- (2) Prohibiting television manufacturers and electronic device manufacturers from charging owners a fee to recycle televisions and electronic devices under certain circumstances;
- (3) Requiring electronic device manufacturers and their agents to be responsible for following regulations and for adopting environmentally sound recycling programs; and
- (4) Requiring recycling programs for electronic devices to be fully implemented and operational no later than January 1, 2010.

The purpose of this Act is to develop an effective and efficient system for recycling televisions and to require manufacturers to offer this recycling service to consumers with convenience. Additionally, the purpose of this Act is to amend chapter 339D, Hawaii Revised Statutes, relating to electronic device manufacturers for enforcement and consumer convenience purposes.

SECTION 2. Chapter 339D, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 339D”**  
**ELECTRONIC WASTE AND TELEVISION RECYCLING AND**  
**RECOVERY ACT”**

SECTION 3. Chapter 339D, Hawaii Revised Statutes, is amended by designating section 339D-1 as part I, entitled “Definitions”.

SECTION 4. Chapter 339D, Hawaii Revised Statutes, is amended by designating sections 339D-2 through 339D-6 as part II, entitled “Electronic Waste Recycling”.

SECTION 5. Chapter 339D, Hawaii Revised Statutes, is amended by designating sections 339D-7 through 339D-12 as part IV, entitled “General Provisions”.

SECTION 6. Chapter 339D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART III. TELEVISION RECOVERY SYSTEM

**§339D-A Applicability.** The recycling provisions of this part shall apply only to covered televisions used and discarded in this state by a covered entity.

**§339D-B Television manufacturers.** (a) No television manufacturer shall sell or offer for sale any new covered television in this state unless:

- (1) The covered television is labeled with a brand, whether licensed or owned, and the label is permanently affixed; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to subsection (b).

(b) By January 1, 2010, before selling or offering for sale any covered television in the state, each television manufacturer shall register with the department and pay to the department a registration fee of \$2,500. Thereafter, if a television manufacturer has not previously registered, the television manufacturer shall register with the department prior to any offer for sale for delivery in this state of the television manufacturer's new covered televisions.

(c) Each television manufacturer who is registered shall submit an annual renewal of its registration and payment of a registration fee of \$2,500 to the department by January 1 of each program year.

(d) The registration and each renewal shall include a list of all of the television manufacturer's brands of covered televisions and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

(e) A television manufacturer shall provide the department with contact information for the television manufacturer's designated agent or employee whom the department may contact for information on the television manufacturer's compliance with the requirements of this section.

**§339D-C Television manufacturer responsibility.** (a) Beginning January 1, 2011, a television manufacturer shall recycle or arrange for the recycling of any covered television sold in the state.

(b) By June 1, 2010, and annually thereafter, each television manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the recycling of covered televisions sold in the state, which shall be subject to the following conditions:

- (1) The plan shall not permit the charging of a fee at the point of recycling if the covered television is brought by the covered television owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the television manufacturer or television manufacturer's agent removes the covered electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with delivery of a new television to the owner; and
- (2) Each television manufacturer may develop its own recycling program or may collaborate with other television manufacturers, so long as the program is implemented and fully operational no later than January 1, 2011.

(c) The department shall review each television manufacturer's plan and, within sixty days of receipt of the plan, determine whether the plan complies with this part. If the plan is approved, the department shall notify the television manufacturer or group of television manufacturers. If the plan is rejected, the department shall notify the television manufacturer or group of television manufacturers and provide the reasons for the plan's rejection. Within thirty

days after receipt of the department's rejection, the television manufacturer or group of television manufacturers may revise and resubmit the plan to the department for approval.

(d) No later than January 31, 2012, and each year thereafter, each television manufacturer shall report to the department the total weight of covered televisions that the television manufacturer collected in the state and recycled during the previous year.

**§339D-D Retailer responsibility.** (a) Beginning January 1, 2011, no retailer shall sell or offer to sell any covered television in this state unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment and the television manufacturer has registered with the State.

(b) Beginning January 1, 2011, retailers shall make available to their customers information on collection services for discarded televisions in the state and shall include the department's website address and toll-free telephone number. Remote retailers may include this information in a visible location on their website to fulfill this requirement.

(c) Retailers shall not be liable in any way for electronic data or other information that a consumer may have stored on a covered television that is recovered or recycled.

**§339D-E Television recovery system.** (a) The department shall use state-specific television sales data or national television sales data available from commercially available analytical sources to determine each television manufacturer's recycling responsibilities for covered televisions based upon the television manufacturer's market share. If the department uses national sales data, the department shall extrapolate data for the State from national data on the basis of the State's share of the national population. The department shall seek to establish the most accurate determination of each television manufacturer's market share and may rely on supplemental sources of information to achieve this goal.

(b) No later than March 15, 2012, and annually thereafter, the department shall notify each television manufacturer of its recycling obligation. Each television manufacturer's obligation shall be based on that television manufacturer's market share from the previous year multiplied by the total pounds of covered televisions recycled by all television manufacturers during the previous program year.

(c) The department shall develop a consumer education program about the covered television recycling program.

(d) Beginning January 1, 2011, the department shall display on its website a toll-free number and current information on covered television recycling locations.

**§339D-F Environmental management.** (a) All covered televisions recovered pursuant to this part shall be recycled in a manner that complies with all applicable federal, state, and county laws and requirements.

(b) The department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices as requirements.

**§339D-G State procurement.** All state and county agencies that purchase or lease any covered television shall require each prospective offeror to certify compliance with this part. Failure to provide certification shall disqualify the prospective offeror."

SECTION 7. Chapter 339D, Hawaii Revised Statutes, part IV, is amended by adding a new section to be appropriately designated and to read as follows:

**“§339D-H Manufacturer and agent responsibilities; regulatory compliance.** Each electronic device manufacturer and television manufacturer shall be responsible for ensuring that the manufacturer and its agents follow all federal, state, and local regulations when collecting, transporting, and recycling covered electronic devices or covered televisions, and adopt environmentally sound recycling practices for the covered electronic devices or covered televisions.”

SECTION 8. Section 339D-1, Hawaii Revised Statutes, is amended to read as follows:

**“[§339D-1] Definitions.** As used in this chapter:

“Brand” means ~~[symbols, words, or marks that identify]~~ a symbol, word, or mark that identifies a covered electronic device[;] or a covered television, rather than any of its components.

“Covered electronic device”:

- (1) Means a computer, computer printer, computer monitor, or portable computer[;] with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
  - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
  - (B) A covered electronic device that is functionally or physically required as a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
  - (C) A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or
  - (D) A telephone of any type.

“Covered entity” means any household, government entity, business, or nonprofit organization exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code, regardless of size or place of operation within the State.

“Covered television”:

- (1) Means any device that is capable of receiving broadcast, cable, or satellite signals and displaying television or video programming, including without limitation any direct view or projection television with a viewable screen of nine inches or larger with display technology based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a household;
- (2) Shall not include:
  - (A) A computer, computer printer, computer monitor, or portable computer;
  - (B) A television that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufac-

turer or franchised dealer, including replacement parts for use in a motor vehicle;

(C) A television that is functionally or physically required as a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;

(D) A telephone of any type, including a mobile telephone; or

(E) A global positioning system.

“Department” means the department of health.

“Electronic device manufacturer”:

(1) Means any existing person:

(A) Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

(B) Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

(C) Who manufactures or manufactured covered electronic devices without affixing a brand;

(D) Who manufactures or manufactured covered electronic devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or

(E) For whose account covered electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time those covered electronic devices are or were imported into the United States and another person has registered as the manufacturer of the brand of the covered electronic devices, this paragraph shall not apply;

(2) Shall not include persons who manufacture no more than one hundred computers per year.

“Household” means any occupant of a single detached dwelling unit or of a single unit of a multiple dwelling unit who has used a covered electronic device or covered television at a dwelling unit primarily for personal or home business use.

[“Manufacturer” means any existing person:

(1) Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

(2) Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

(3) Who manufactures or manufactured covered electronic devices without affixing a brand;

(4) Who manufactures or manufactured covered electronic devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or

(5) For whose account covered electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time such covered electronic devices are or were

~~imported into the United States and another person has registered as the manufacturer of the brand of the covered electronic devices; this paragraph shall not apply;~~  
~~provided that the term "manufacturer" shall not include persons located in the State who manufacture specialized computers and have sales of no more than one hundred computers per year.]~~

"Market share":

(1) Means the calculation of a television manufacturer's prior year's sales of televisions divided by all manufacturers' prior year's sales for all televisions, as determined by the department;

(2) May be expressed as a percentage, a fraction, or a decimal fraction.

"New covered electronic device" means a covered electronic device that is manufactured after the effective date of this chapter.

"Person" means any individual, business, partnership, limited liability company, corporation, not-for-profit organization, association, government entity, public benefit corporation, or public authority.

"Program year" means a full calendar year beginning on or after January 1, 2010[-], and each calendar year thereafter beginning on January 1.

"Recover" means to reuse or recycle.

"Recycling" means processing (including disassembling, dismantling, or shredding) covered electronic devices or covered televisions or their components to recover a useable product[-. "Reeyeling"]; provided that "recycling" does not include any process defined as incineration under applicable laws and rules.

"Retailer" means any person who offers covered electronic devices or covered televisions for sale, other than for resale by the purchaser, through any means, including sales outlets, catalogs, or the Internet.

"Sell" or "sale" means any transfer for consideration of title, including transactions conducted through sales outlets, catalogs, or the Internet, but excluding leases.

"Television manufacturer" means a person who:

(1) Manufactures for sale in the state a covered television under a brand that it licenses or owns;

(2) Manufactures for sale in the state covered televisions without affixing a brand;

(3) Resells into the state a covered television manufactured by others under a brand that the seller owns or is licensed to use;

(4) Imports into the United States or exports from the United States a covered television for sale in the state;

(5) Sells at retail a covered television acquired from an importer described in paragraph (4), and elects to register as the manufacturer for those products;

(6) Manufactures covered televisions and supplies them to any person or persons within a distribution network that includes wholesalers or retailers in this state; or

(7) Assumes the responsibilities and obligations of a television manufacturer under this chapter.

In the event the television manufacturer is one who manufactures, sells, or resells covered televisions under a brand for which it has obtained the license, then the licensor or brand owner of the brand shall not be included in the definition of television manufacturer under paragraph (1) or (3)."

SECTION 9. Section 339D-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§339D-2] Scope of products.** The collection, transportation, and recycling provisions of this [chapter] part shall apply only to covered electronic devices used and discarded in this State by a covered entity.”

SECTION 10. Section 339D-3, Hawaii Revised Statutes, is amended to read as follows:

**“[§339D-3] Sales prohibition.** (a) Beginning January 1, 2010, no electronic device manufacturer or retailer shall sell or offer for sale any new covered electronic device for delivery in this State unless:

- (1) The covered electronic device is labeled with a brand, and the label is permanently affixed and readily visible; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to section 339D-4(b)(3).

(b) Beginning April 1, 2009, the department shall maintain a list of each registered electronic device manufacturer and the brands reported in each electronic device manufacturer's registration and a list of brands for which no electronic device manufacturer has registered. The lists shall be posted on the department website and shall be updated by the first day of each month. Each retailer who sells or offers for sale any new covered electronic device for delivery in this State shall review these lists prior to selling the covered electronic device. A retailer is considered to have complied with subsection (a) if, on the date a new covered electronic device was ordered by the retailer, the brand was included on the department's list of brands reported in [a] an electronic device manufacturer's registration.”

SECTION 11. Section 339D-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§339D-4] ~~Manufacturer~~ Electronic device manufacturer responsibility.**

(a) Beginning October 1, 2009, each electronic device manufacturer shall label all new covered electronic devices to be offered for sale for delivery in this State with a brand, which label shall be permanently affixed and readily visible.

(b) (1) By January 1, 2009, each electronic device manufacturer of new covered electronic devices offered for sale for delivery in this State shall register with the department and pay to the department a registration fee of \$5,000. Thereafter, if [a] an electronic device manufacturer has not previously registered, the electronic device manufacturer shall register with the department prior to any offer for sale for delivery in this State of the electronic device manufacturer's new covered electronic devices.

(2) Each electronic device manufacturer who is registered shall submit an annual renewal of its registration with the payment of a registration fee of \$5,000, by January 1 of each program year.

(3) The registration and each renewal shall include a list of all of the electronic device manufacturer's brands of covered electronic devices and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

(c) By June 1, 2009, and annually thereafter, each electronic device manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the collection, transportation, and recycling of its covered electronic devices sold in the State[.], which shall be subject to the following conditions:

- (1) The plan shall not permit the charging of a fee at the point of recycling if the covered electronic device is brought by the covered electronic device owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the electronic device manufacturer or electronic device manufacturer's agent removes the covered electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with delivery of a new electronic device to the owner; and
- (2) Each electronic device manufacturer may develop its own recycling program or may collaborate with other electronic device manufacturers, so long as the program is implemented and fully operational no later than January 1, 2010.
- (d) By March 31, 2011, and annually thereafter, each electronic device manufacturer shall submit to the department the total weight of all covered electronic devices recycled in the previous year, which may include both [a] an electronic device manufacturer's own covered electronic devices and those of other manufacturers.
- (e) By July 1, 2011, and annually thereafter, the department shall publish a ranking of all electronic device manufacturers selling covered electronic devices in the State, based upon the annual total weight of covered electronic devices recycled by each electronic device manufacturer in the previous year.
- (f) The State may adopt regulations allowing a procurement preference based upon [a] an electronic device manufacturer's ranking.
- (g) The department shall review each electronic device manufacturer's plan and, within sixty days of receipt of the plan, shall determine whether the plan complies with this ~~[chapter.]~~ part. If the plan is approved, the department shall notify the electronic device manufacturer or group of electronic device manufacturers. If the plan is rejected, the department shall notify the electronic device manufacturer or group of electronic device manufacturers and provide the reasons for the plan's rejection. Within thirty days after receipt of the department's rejection, the electronic device manufacturer or group of electronic device manufacturers may revise and resubmit the plan to the department for approval.
- (h) The obligations under this ~~[chapter]~~ part for [a] an electronic device manufacturer who manufactures or manufactured covered electronic devices, or who sells or sold covered electronic devices manufactured by others, under a brand that was previously used by a different person in the manufacture of covered electronic devices, shall extend to all covered electronic devices bearing that brand.
- (i) Nothing in this ~~[chapter]~~ part is intended to exempt any person from liability that the person would otherwise have under applicable law."

SECTION 12. Section 339D-8, Hawaii Revised Statutes, is amended to read as follows:

**"[§339D-8] Enforcement.** (a) The department may conduct audits and inspections to determine compliance under this chapter. Except as provided in subsection (c), the department and the attorney general shall be empowered to enforce this chapter and take necessary action against any electronic device or television manufacturer or retailer for failure to comply with this chapter or rules adopted thereunder.

(b) The attorney general may file suit in the name of the State to enjoin an activity related to the sale of covered electronic devices or covered televisions in violation of this chapter.



(c) The department shall issue a warning notice to a person for the person's first violation of this chapter. The person shall comply with this chapter within sixty days of the date the warning notice was issued or be subject to the penalties provided by law or rule[-], including, but not limited to, penalties set forth in subsections (d) through (g). A retailer that receives a warning notice from the department for a violation of section 339D-3(a) or 339D-D(a) shall submit proof to the department, within sixty days from the date the warning notice was issued, that its inventory of covered electronic devices or covered televisions offered for sale is in compliance with this chapter.

(d) Any retailer who sells or offers for sale an unlabeled electronic device or unlabeled covered television in violation of section 339D-3 or 339D-D, respectively, or any electronic device or television manufacturer that fails to comply with any provision of section 339D-4 or 339D-C, respectively, may be assessed a penalty of up to \$10,000 for the first violation and up to \$25,000 for the second and each subsequent violation, in addition to any additional penalties required or imposed pursuant to this chapter.

(e) Except as provided in subsection (d), any person who violates any requirement of this chapter may be assessed a penalty of up to \$1,000 for the first violation and up to \$2,000 for the second and each subsequent violation, in addition to any additional penalties required or imposed pursuant to this chapter.

(f) The department shall determine additional penalties based on adverse impact to the environment, unfair competitive advantage, and other considerations that the department deems appropriate.

(g) If a covered television manufacturer fails to recycle its market share allocation, the department shall impose a penalty of 50 cents per pound for each pound not recycled."

SECTION 13. Section 339D-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§339D-9] Administrative penalties[-]; fees.** (a) In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter for a violation thereof, the department is authorized to impose by order administrative penalties and is further authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or to bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs.

(b) Notwithstanding subsection (a), the department shall not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, television manufacturers, or retailers for recovery of covered televisions except those noted in sections 339D-B and 339-4."

SECTION 14. Section 339D-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§339D-11] Financial and proprietary information[-]; report.** (a) Notwithstanding any law to the contrary, financial or proprietary information, including trade secrets, commercial information, and business plans, submitted to the department under this chapter is confidential and is exempt from public disclosure[-] to the extent permitted by chapter 92F.

(b) The department shall compile the information submitted by covered television manufacturers and issue a report to the legislature no later than April 1, 2012, and annually each year thereafter."

SECTION 15. Section 339D-12, Hawaii Revised Statutes, is amended to read as follows:

**“[§§339D-12]] Federal preemption. [This] (a) Part II of this chapter shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered electronic devices that substantially meets the intent of part II of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic devices from covered entities in the United States.**

**(b) Part III of this chapter shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the recycling of covered televisions that substantially meets the intent of part III of this chapter.”**

SECTION 16. Implementation of this Act by January 1, 2011, shall be deemed to satisfy the requirement for a separate plan for the collection, transportation, and recycling of televisions as set forth in section 3 of Act 13, Special Session Laws of Hawaii 2008.

SECTION 17. In codifying the new sections added by sections 6 and 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 184**

**S.B. NO. 470**

**A Bill for an Act Relating to Liquor.**

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 231-28, Hawaii Revised Statutes, is amended to read as follows:

**“§231-28 Tax clearance before procuring liquor licenses.** No liquor licenses shall be issued or renewed unless the applicant therefor shall present to the issuing agency, a certificate signed by the director of taxation, showing that the

applicant does not owe the State any delinquent taxes, penalties, or interest[-]; or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments."

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of "retail licensee" to read as follows:

"Retail licensee" means any licensee holding a class 2 or class 4 through class [14] 16 license."

SECTION 3. Section 281-3, Hawaii Revised Statutes, is amended to read as follows:

**"§281-3 Illegal manufacture, importation, or sale of liquor.** It shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in this chapter; provided that the head of any family may produce for family use and not for sale an amount of wine not exceeding two hundred gallons a year, and an amount of beer not exceeding one hundred gallons a year.

It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter. Liquor imported into this State shall come to rest at the warehouse of the manufacturer (including rectifier) or the wholesaler importing the liquor, shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such manufacturer (including rectifier) or wholesaler.

It shall also be unlawful for any person to label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", "Aloha State", "50th State", "Kauai", "Maui", "Oahu", or "Honolulu" unless such liquor is wholly or partially manufactured in the State, and all of the primary ingredients are wholly rectified or combined in the State of Hawaii in compliance with the ~~[Bureau of Alcohol, Tobacco and Firearms]~~ Alcohol and Tobacco Tax and Trade Bureau standards.

A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by the licensee."

SECTION 4. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education;

provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;

- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
- (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;
- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
- (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated

- amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
- (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.”

SECTION 5. Section 281-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

- (1) Notifies the commission in writing of the employee’s intent to support, advocate, or aid in the election or defeat of a candidate for public office; and
- (2) If a candidate for public office, takes a leave of absence in accordance with ~~[chapter 79]~~ section 78-23 for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.”

SECTION 6. Section 281-31, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (n) to read:

“(n) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee’s premises during the license year;
- (2) May sell malt beverages manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county [planning and public works departments;] by ordinance or rule;
- (4) May sell intoxicating liquor, purchased from a class 1 manufacturer licensee, or a class 3 wholesale dealer licensee, to consumers for consumption on the licensee’s premises. The categories of establishments shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee’s premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, “growler” means a glass container, not to exceed one half-gallon, which shall be securely sealed;
- (6) May sell malt beverages manufactured on the licensee’s premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee’s premises, for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages; and
- (8) May sell malt beverages manufactured on the licensee’s premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel

licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county regulations governing class 1 ~~[[manufacturer]]~~ licensees and class 3 wholesale dealer licensees.”

2. By amending subsection (p) to read:

“(p) ~~[[p]]~~ Class 16. Winery license. A winery licensee:

- (1) Shall manufacture not more than ten thousand barrels of wine on the licensee’s premises during the license year;
- (2) May sell wine manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county [planning and public works departments] by ordinance or rule;
- (4) May sell wine manufactured on the licensee’s premises to consumers in winery-sealed kegs and magnums for off-premises consumption; provided that for purposes of this paragraph, “magnum” means a glass container, not to exceed one half-gallon, which may be securely sealed;
- (5) May sell wine manufactured on the licensee’s premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee’s premises, for off-premises consumption;
- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and
- (7) May sell wine manufactured on the licensee’s premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, ~~[class 7 vessel licensees,]~~ class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees~~;~~ and
- (8) ~~May conduct the activities described in paragraphs (1) through (7) at locations other than the licensee’s premises; provided that the manufacturing takes place in Hawaii; and provided further that the other locations are properly licensed by the same ownership].”~~

SECTION 7. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

**“§281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license; penalty.** (a) No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of the issuance or transfer, except for good cause shown to the satisfaction of the liquor commission. A transfer of license shall be for the same class, kind, and category of license. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the

premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to the owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who must comply with the [notice] requirements as set forth in [section 281-57.] sections 281-57 to 281-60.

~~[(b) No class 5 or 12 license issued to a standard bar, as defined in section 281-1, shall be transferable to other than a standard bar and that such license shall be subject to revocation if the licensed premises is not retained as a standard bar except upon written application to the commission by the licensee or the proposed transferee, subject to sections 281-51 to 281-60.~~

~~(e)~~ (b) A county may increase the requirements for transfers of class 5, category ~~[(1)]~~ (B) and (D), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.

~~[(d)]~~ (c) For the purpose of this section, "special liquor district" means an area designated by a county for restoration, reservation, historic preservation, redevelopment, rejuvenation, or residential protection, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

~~[(e)]~~ (d) Where a license is held by a partnership, the commission may, notwithstanding this section, approve the transfer of the [license] partnership interest upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice ~~[and without]~~ at a public hearing.

~~[(f)]~~ (e) Where a license is held by a partnership, limited partnership, limited liability partnership, or a limited liability company, the admission or withdrawal of a limited partner, partner of a limited liability partnership, or a member of the limited liability company shall not be deemed a transfer of the license held by the partnership or limited liability company, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner, partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, partners, member, or members who have been admitted, if that be the case. If the commission finds a ~~[limited]~~ partner or a member to be an unfit or improper person to hold a license in the ~~[limited]~~ partner's or member's own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership or the limited liability company until the unfit or improper partner or member is removed or replaced.

~~[(g)]~~ (f) Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word "applicant", as used in such sections, shall include each such proposed transferee, and the words, "application for a license or for the renewal of a license", as used in such sections, shall include an application for the transfer of a license.

~~[(h)]~~ (g) Upon the hearing, the commission shall consider the application and any objections to the granting thereof and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer and the refusal by the commission to approve a

transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

(h) If any licensee without such approval transfers to any other person the licensee's business for which the licensee's license was issued, either openly or under any undisclosed arrangement, whereby any person, other than the licensee, comes into possession or control of the business or takes in any partner or associate, the commission may in its discretion suspend or cancel the license.

(i) If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, prior to the date of the transfer, apply for and secure the approval of the transfer from the commission in writing. If the commission finds that the proposed transferee is an unfit or improper person to hold a license in the proposed transferee's own right pursuant to section 281-45, it shall not approve the proposed transfer. If any transfer is made without the prior approval of the commission, the commission may in its discretion revoke or suspend the license until it determines that the transferee is a fit and proper person, and if the commission finds that the transferee is not a fit and proper person, until a retransfer or new transfer of the capital stock is made to a fit and proper person pursuant to section 281-45. In addition, the corporate licensee shall, within thirty days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of the officer or director. If the commission finds the transferee, officer, or director an unfit or improper person to hold a license in the transferee's, officer's, or director's own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of the capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper transferee, officer, or director is removed or replaced by a fit and proper person pursuant to section 281-45.

(j) If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee's license for cancellation.

(k) The conversion of an entity into any other form of entity or the merger of any entity with any other entity shall not be deemed a transfer of the license; provided that the licensee, prior to the date of the conversion or merger, shall apply for and secure the approval of the commission without any requirement for publication of notice. The foregoing shall not preclude compliance with subsection (d) upon a change in any of the partners or members, or with subsection (i) upon change of any shareholders, officers, or directors of any entity occurring concurrently with a conversion or merger.

As used in this subsection, "entity" means a corporation, partnership, limited partnership, limited liability partnership, or limited liability company."

SECTION 8. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

**"§281-45 No license issued, when.** No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned (except that the commission may grant a license under this chapter to a corporation that has been convicted of a



felony where the commission finds that the organization's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license), or to any other person not deemed by the commission to be a fit and proper person to have a license;

- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually;
- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement; or
- (4) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter."

SECTION 9. Section 281-57, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

- (1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the ~~[last tax return filed by]~~ current real property tax record of the person or the person's agent or representative;
- (2) In counties with a population of five hundred thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked;

provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to applications for class 2, class 4, class 12, and class 15 licenses. A notice sent pursuant to this paragraph shall be addressed to the "occupant" of the residential unit or small business; and

- (3) For each condominium project and cooperative apartment within the five hundred-foot area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium or cooperative apartment involved.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven business days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-business-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven business days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section, "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of [this section]."

SECTION 10. Section 281-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest. The liquor commission shall accept all written or oral testimony for or against the application whether the application is denied, refused, or withdrawn. Within ~~[fifteen]~~ ninety days after the hearing, or within ~~[thirty]~~ one hundred twenty days thereafter if in its discretion the commission extends the ~~[fifteen]~~ ninety days to ~~[thirty]~~ one hundred twenty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked,

have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under this chapter, the ap-

plication shall be refused. Otherwise, the commission may in its discretion grant or refuse the same.

For purposes of defining “a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment”, each property counts only once; provided that roadways shall not be included. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. A protest filed by owners or lessees who own more than one property shall be counted for each property.”

SECTION 11. Section 281-85, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor; or to [give] offer or to provide any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 185

H.B. NO. 591

A Bill for an Act Relating to Public Utilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that public utilities in Hawaii are required to meet renewable portfolio standards. These standards require twenty per cent of each electric utility’s sales to come from renewable energy by 2020. The Hawaii Clean Energy Initiative proposes to increase this renewable energy requirement to forty per cent by 2030. Additionally, the Hawaii Constitution identifies increased agricultural self-sufficiency as being in the public interest.

The legislature also finds that renewable energy creates the maximum benefit to the State when it is locally produced. Renewable energy sources that complement the production of agricultural products are especially desirable. These sources provide for food and fiber self-sufficiency while also providing electricity. It is in the interest of the State to encourage the synergy between agricultural production and renewable energy production.

The legislature finds that renewable energy produced in conjunction with agricultural activities may include, but is not limited to, energy generated or produced by a farming operation as defined in section 165-2, Hawaii Revised Statutes, primarily using biomass, hydropower, or other non-fossil fuel sources where a portion of the energy produced is used as the primary power source for the farming operation.

The legislature further finds that preferential rates for electrical energy produced in conjunction with agricultural activities, including compensation to agricultural energy producers for their costs and a reasonable return on investment, will

support the long-term viability of renewable energy produced by agricultural producers. The legislature concludes that this will serve two policy goals of the State:

- (1) Increased energy self sufficiency; and
- (2) Increased agricultural sustainability.

The purpose of this Act is to authorize and encourage the establishment of preferential rates for renewable energy produced in conjunction with agricultural activities.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Preferential renewable energy rates; agricultural activities.** It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities. The public utilities commission shall have the authority to establish preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities.

Upon receipt of a bona fide request for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities, and proof that the renewable energy is produced in conjunction with agricultural activities, a public utility shall forward the request for preferential rates to the public utilities commission for approval.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 186**

H.B. NO. 1379

A Bill for an Act Relating to Physician Orders for Life Sustaining Treatment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Department” means the department of health.

“Form” means a physician orders for life-sustaining treatment form adopted by the department.

“Health care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of the individual's business or profession.

“Patient's physician” means a physician licensed pursuant to chapter 453 who has examined the patient.

“Physician orders for life-sustaining treatment form” means a form signed by a patient, or if incapacitated, by the patient's surrogate and the pa-

tient's physician, that records the patient's wishes and that directs a health care provider regarding the provision of resuscitative and life-sustaining measures. A physician orders for life-sustaining treatment form is not an advance health-care directive.

"Surrogate" shall have the same meaning as in section 327E-2.

**§ -2 Physician orders for life-sustaining treatment form; execution; explanation; compliance; revocation.** (a) The following may execute a form:

- (1) The patient;
- (2) The patient's physician; and
- (3) The surrogate, but only if the patient:
  - (A) Lacks capacity; or
  - (B) Has designated that the surrogate is authorized to execute the form.

The patient's physician may medically evaluate the patient and, based upon the evaluation, may recommend new orders consistent with the most current information available about the individual's health status and goals of care. The patient's physician shall consult with the patient or the patient's surrogate before issuing any new orders on a form. The patient or the patient's surrogate may choose to execute or not execute any new form. If a patient is incapacitated, the patient's surrogate shall consult with the patient's physician before requesting the patient's physician to modify treatment orders on the form. To be valid, a form shall be signed by the patient's physician and the patient, or the patient's physician and the patient's surrogate. At any time, a patient, or, if incapacitated, the patient's surrogate, may request alternative treatment that differs from the treatment indicated on the form.

(b) The patient's physician or a health care provider shall explain to the patient the nature and content of the form, including any medical intervention or procedures, and shall also explain the difference between an advance health-care directive and the form. The form shall be prepared by the patient's physician or a health care provider based on the patient's preferences and medical indications.

(c) Any health care provider, including the patient's physician, emergency medical services personnel, and emergency physicians shall comply with a properly executed and signed form and treat the patient according to the orders on the form; provided that compliance shall not be required if the orders on the form request medically ineffective health care or health care that is contrary to generally accepted health care standards.

(d) A patient having capacity, or, if the patient is incapacitated, the patient's surrogate, may revoke a form at any time and in any manner that communicates intent to revoke.

**§ -3 Immunity.** (a) No physician, health care professional, nurse's aide, hospice provider, home care provider, including private duty and medicare home health providers, emergency medical services provider, adult residential care home operator, skilled nursing facility operator, hospital, or person employed by or under contract with a hospital shall be subject to criminal prosecution, civil liability, or be deemed to have engaged in unprofessional conduct for:

- (1) Carrying out in good faith, a decision regarding treatment orders, including cardiopulmonary resuscitation by or on behalf of a patient pursuant to orders in a form and in compliance with the standards and procedures set forth in this chapter; or

- (2) Providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued on a form; provided the person reasonably and in good faith:
  - (A) Was unaware of the issuance of an order not to resuscitate; or
  - (B) Believed that any consent to treatment orders, including the order not to resuscitate, had been revoked or canceled.

(b) No person shall be subject to criminal prosecution or civil liability for consenting or declining to consent, in good faith and on behalf of a patient, to the issuance of an order not to resuscitate pursuant to this chapter.

§ -4 Rules. The director of health may adopt rules in accordance with chapter 91 to carry out this chapter."

SECTION 2. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 187

H.B. NO. 994

A Bill for an Act Relating to Tourism.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that tourism is the chief generator of employment and revenue in the state, and extends into all sectors of the State's economy. New developments in technology, visitor sophistication, and increased competition from other world tourism markets have challenged Hawaii's tourism industry to attract visitors with specific interests.

The legislature recognizes that expansion of the State's tourism product by developing new niche products, such as space tourism, can enhance Hawaii's appeal as a tourist destination.

In 2007, Virgin Galactic confirmed viability of space tourism, by earning approximately \$31,000,000 in ticket revenue from over one hundred passengers. On December 15, 2008, the Federal Aviation Administration awarded a launch license for vertical and horizontal launch to the New Mexico Spaceport Authority to establish a commercial spaceport.

Space tourism is a potential billion dollar global industry that could significantly increase state revenue sources, provide new aerospace jobs, and rejuvenate economic development in the Kalaeloa area. The Federal Aviation Administration is expected to issue a limited number of spaceport licenses, and the legislature finds that it is crucial to position Hawaii for the economic advantages a license may bring.

The purpose of this Act is to appropriate funds for the application for a spaceport license from the Federal Aviation Administration.

SECTION 2. There is appropriated out of the airport revenue fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2009-2010 to be transferred from the department of transportation to the department of business, economic development, and tourism for the application for a spaceport license from the Federal Aviation Administration.

There is appropriated out of the tourism special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2009-2010 to be transferred from the Hawaii tourism authority to the department of business,

economic development, and tourism for the application for a spaceport license from the Federal Aviation Administration.

Notwithstanding sections 201B-11 and 261-5, the sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 188

H.B. NO. 1776

A Bill for an Act Relating to Public Assistance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, under section 346-29(b), Hawaii Revised Statutes, an applicant or recipient of public assistance who is also an inmate of any public institution may not receive public assistance from the State under chapter 346, Hawaii Revised Statutes. The one exception is for an inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution. In addition, any applicant or recipient who is found guilty of fraudulently misrepresenting residence in two or more states to receive assistance is also prohibited from receiving public assistance in Hawaii for ten years from the date of conviction. Furthermore, a fugitive felon or an individual who is in violation of a condition of probation or parole, or has sufficient income or other resources to provide a standard above that required by chapter 346, Hawaii Revised Statutes, may not receive public assistance in the state.

However, the legislature finds that the department of public safety does not provide the department of human services with lists of newly admitted inmates. The department of human services currently does not regularly screen inmates for receipt of public assistance except for inmates who are convicted of welfare fraud.

The purpose of this Act is to improve the efficiency of enforcing the public assistance law with respect to inmates who are no longer eligible to receive public assistance by requiring the department of public safety to provide monthly lists of newly admitted inmates to the department of human services to enable that department to screen for all inmates not eligible to receive public assistance.

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353- Public assistance; inmates; monthly reports to department of human services.** Beginning January 31, 2010, to assist the department of human services to enforce section 346-29(b), the director shall prepare and transmit to the department of human services monthly reports listing all inmates newly admitted during the previous month to any correctional facility within the state; provided that no later than December 31, 2009, the director shall transmit to the department of human services an initial list of all inmates within the department of public safety's correctional facilities statewide.”

SECTION 3. Section 346-29, Hawaii Revised Statutes, is amended to read as follows:

**“§346-29 Applications for public assistance; manner, form, conditions.** (a) Applications for public assistance under this chapter shall be made by the applicant, or by someone acting in the applicant's behalf, in the manner, place, and form prescribed by the department.

(b) No applicant or recipient who is found guilty of fraudulently misrepresenting residence to obtain assistance in two or more states shall be entitled to public assistance under this chapter for ten years from date of conviction. No applicant or recipient shall be entitled to public assistance under this chapter who is a fugitive felon or who is in violation of a condition of probation or parole or has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution, except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of a public institution or resident of a medical institution may apply for assistance to begin after the inmate's discharge from the institution. To enforce this subsection, the department shall examine each list of inmates within, or newly admitted to, a correctional facility in the state that is submitted to the department by the director of public safety pursuant to section 353- , regardless of the nature of the offense for which an inmate is incarcerated or the duration of incarceration, to determine whether an inmate is eligible for public assistance under this chapter.

(c) In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) Disregard the amounts of earned or unearned income as required or allowed by federal acts and other regulations, to receive federal funds and disregard from gross earned income twenty per cent plus \$200 and a percentage of the remaining balance of earned income consistent with federal regulations and other requirements;
- (2) Consider as net income in all cases the income as federal acts and other regulations require the department to consider for receipt of federal funds and may consider the additional income and resources as these acts and regulations permit to be considered;
- (3) For households with minor dependents, disregard a total of \$5,000 in assets and the value of one motor vehicle in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under federally funded financial assistance programs. This paragraph shall not apply to persons eligible for federal supplemental security income benefits, aid to the aged, blind or disabled, or general assistance to households without minor dependents. In determining the needs of persons eligible for federal supplemental security income benefits, aid to the aged, blind, or disabled, or general assistance to households without minor dependents, the department shall apply all the resource retention and exclusion requirements under the federal supplemental security income program;
- (4) Apply the resource retention requirements under the federal supplemental security income program in determining the needs of a single person for medical assistance only;



- (5) Apply the resource retention requirements under the federal supplemental security income program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only;
- (6) Disregard amounts of emergency assistance granted under section 346-65;
- (7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the first to work program of part XI, other than wages. Wages earned by a participant while participating in the first to work program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;
- (8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;
- (9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;
- (10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree;
- (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter; and
- (12) Not consider as income or resources any funds deposited into a family self-sufficiency escrow account on behalf of a participant under a federal housing choice voucher family self-sufficiency program as required or allowed under federal law.

~~[(e)]~~ (d) In determining eligibility for medical assistance, the department shall require from all applicants and recipients the assignment of any benefits due to a third party liability. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this chapter.

~~[(d)]~~ (e) The director shall adopt rules pursuant to chapter 91 defining assets and to determine eligibility for medical assistance; provided that the cash surrender value of life insurance policies owned by persons included in an application shall be treated as assets."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 189**

S.B. NO. 764

A Bill for an Act Relating to Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that small businesses are an essential element in strengthening and diversifying Hawaii's economy and creating jobs for our people. More than ninety-five per cent of all Hawaii establishments are small businesses, and they provide jobs for sixty per cent of all Hawaii employees.

The legislature further finds that despite their contribution to Hawaii's economy, small businesses are at a disadvantage in terms of land ownership. The commercial and industrial properties that exist within the State's urban districts are primarily owned by a few landowners. These landowners control large tracts of land and retain their ownership by means of leases to small businesses, which in turn supply services and products to the communities within or adjacent to the commercial and industrial properties. Without these neighborhood businesses, consumers would be compelled to travel long distances and expend large amounts of time and effort to locate these needed services and products.

In the city and county of Honolulu's "Annual Report on the Status of Land Use on Oahu, Fiscal Year 2006" (February 2008), growth projections show a decided shift of industrial jobs away from the primary urban center. In 2000, approximately eighty per cent of industrial jobs were located in the primary urban center. However, by 2030 that percentage is projected to drop to seventy-one per cent. During that same period, industrial jobs in the Ewa region are projected to nearly double, from seven to thirteen per cent. In central Oahu, industrial jobs are projected to increase from seven to ten per cent.

The legislature further finds that small businesses often depend on commercial and industrial leases, which may contain provisions that are vague or onerous and that eventually force these businesses to relocate to rural areas and away from the urban centers.

The legislature further finds that the proximity of small businesses to urban communities serves to stabilize Hawaii's economy, especially during the United States' current recessionary period. Thus, maintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.

The purpose of this Act is to help stabilize Hawaii's economy by addressing some of the burdensome or vague provisions of existing commercial and industrial leases of certain lands within urban districts by clarifying provisions in long-term commercial and industrial ground leases without substantial reduction in the economic benefit to the owners or impact on their ownership of the land, without impairing their lease contracts, and without the taking of any property rights without due process of law.

SECTION 2. Chapter 519, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§519- Leases of commercial and industrial property.** (a) Notwithstanding any other law to the contrary and unless expressly stated to the contrary in the lease, any lease of commercial or industrial leasehold property shall be subject to the following terms and conditions:

- (1) Whenever a lease subject to this section provides for the renegotiation of the rental amount or other requirements during the term of the lease and the renegotiated rental amount or other recompense is based, according to the terms of the lease, in whole or in part on a “fair and reasonable” annual rent, that provision shall:
  - (A) Be construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease; and
  - (B) Take into account any and all relevant attendant circumstances relating to the lease, including:
    - (i) The uses and intensity of the use of the leased property during the term of the lease approved by the lessor; and
    - (ii) The surface and subsurface characteristics of the leased property and the surrounding neighborhood on the renegotiation date.
- (2) With respect to a lessee who is a master lessee, paragraph (1), relating to the renegotiation of the lease rental amount charged to the lessee for the leased property, shall apply only if the master lessee agrees to comply with this paragraph when determining the renegotiated sublease rental amount charged to a sublessee. The master lessee shall agree to limit any sublease rental amount renegotiated or renewed during the period the renegotiated lease rent under paragraph (1) is in effect to the lesser of:
  - (A) The “fair and reasonable” amount as determined in accordance with paragraph (1). For the purpose of this subparagraph, the sublease shall be deemed to include a requirement that the renegotiated rental amount be “fair and reasonable”; or
  - (B) The rental amount as calculated under the renegotiation or renewal provisions of the sublease.

Any dispute as to the renegotiated sublease rental amount under subparagraph (A) or (B) shall be resolved in accordance with the dispute resolution provisions of the sublease.

If the sublessee also acts as a sublessor and subleases the property to another person, the master lessee shall make a good faith effort to require the sublessor to comply with this paragraph in determining the sublease rental amount charged to another person. If the master lessee does not comply with this paragraph, paragraph (1) shall not apply in determining the renegotiated lease rental amount charged to the master lessee.

(b) For purposes of this section:

“Commercial or industrial leasehold property” means any ground lease of real property:

- (1) Situated in the State;
- (2) Zoned by a county for commercial or industrial use;
- (3) That is subject to a lease with a term of ten years or more and an unexpired term of five years or more; and
- (4) Where the lessor is the owner, directly or indirectly, of fifty thousand square feet or more of industrial and commercial property in the State.

“Lease” means a conveyance leasing privately owned land by a fee simple owner, as lessor, to any person or entity for a term of ten years or more in consideration of a return of rent or other remuneration.

“Sublease” means a conveyance subleasing privately owned land by a master lessee or sublessor to any person or entity in consideration of a return of rent or other remuneration.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2010; provided that the repeal of this Act shall not affect renegotiations of any lease or sublease rental amount, the renegotiation date for which occurred before July 1, 2010; provided further that this Act shall not apply to any lease scheduled for renegotiation after June 30, 2010.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 190**

H.B. NO. 111

A Bill for an Act Relating to State Salaries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 78-12, Hawaii Revised Statutes, is amended to read as follows:

**“§78-12 Salary withheld for indebtedness to the government.** (a) In case any officer, agent, employee, or other person in the service of a jurisdiction is indebted to a jurisdiction and the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of collecting the indebtedness, the disbursing officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to the indebted person, shall withhold one-quarter of the salary, wages, or compensation due the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of a jurisdiction, the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee, or other person in the service of the jurisdiction, alleged to be indebted to a jurisdiction, may waive the right to a hear-

ing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and
- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the disbursing officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the disbursing officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness[-]; provided that, to be an actionable cause of action, the determination and notice to the employee shall be made within two years from the date of the salary or wage overpayment, and not after. If the employee contests the disbursing officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91.

(f) Regardless of whether a contested determination of indebtedness is pending, the disbursing officer shall commence immediate recovery of the indebtedness as provided in this subsection. If the indebtedness is equal to or less than \$1,000, the disbursing officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness and for indebtedness greater than \$1,000, the disbursing officer shall deduct:

- (1) An amount agreed to by the employee and the appointing authority, but not less than \$100 per pay period; or
- (2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full.

In addition to paragraph (1), an employee and the appointing authority may agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service; provided that credits shall not be applied to any extent that would require a refund of any moneys already deducted or repaid or that would require the payment of any moneys to the employee equivalent to a cashing out of leave or compensatory time credits.

(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

- (1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest as specified by section 103-10; or
- (2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee's respective leave or compensatory time accounts and shall not result in a cash payment.

(h) If an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedure shall be used in lieu of a hearing under subsection (e). A collective bargaining agreement may include overpayment recovery procedures; provided that the parties do not agree on any provision that would be inconsistent with subsections (f) and (g).

(i) Where an officer, agent, employee, or other person in the service of a jurisdiction is compensated in an amount greater than or less than that to which the person is entitled, the determination of the officer's, agent's, employee's, or other person's average final compensation for the period of indebtedness shall be calculated in accordance with section 88-81; provided that the compensation used to calculate the average final compensation shall be the compensation the officer, agent, employee, or other person should have been paid during that period."

SECTION 3.<sup>1</sup> This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5.<sup>1</sup> This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. So in original.

**ACT 191**

H.B. NO. 1362

A Bill for an Act Relating to Genetic Counselors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to require licensure for individuals offering genetic counseling services in order to:

- (1) Safeguard the public health, safety, and welfare;
- (2) Protect those seeking genetic counseling services from incompetent and unscrupulous persons, and persons unauthorized to perform these services;
- (3) Assure the highest degree of professional conduct on the part of genetic counselors; and
- (4) Assure the availability of high quality genetic counseling services.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER  
GENETIC COUNSELORS**

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

"Active candidate status" means documentation of eligibility to take the American Board of Genetic Counseling or its equivalent certification examinations.

“Board certified” means an individual who has passed the American Board of Genetic Counseling certification examination and remains actively certified by American Board of Genetic Counseling or its equivalent.

“Department” means the department of health.

“Director” means the director of health.

“Genetic counseling practice” means the rendering of professional counseling services based on specialized education and training to individuals, families, or groups for compensation, monetary or otherwise. These counseling services include the communication process which deals with the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder. “Genetic counseling practice” includes:

- (1) Obtaining and interpreting individual, family, medical, developmental, and reproductive histories;
- (2) Determining the mode of inheritance and risk of transmission of genetic conditions and birth defects;
- (3) Discussing the inheritance, features, natural history, means of diagnosis, and management of these conditions;
- (4) Identifying, coordinating, interpreting, and explaining genetic laboratory tests and other diagnostic studies;
- (5) Assessing psychological factors and recognizing social, educational, and cultural issues related to having or being at risk for genetic conditions;
- (6) Evaluating the client’s or family’s responses to the genetic condition or risk of having the genetic condition, and providing client-centered counseling and anticipatory guidance;
- (7) Communicating information to their clients in an understandable manner;
- (8) Facilitating informed decision making about testing, treatment, and management;
- (9) Identifying and effectively using community resources that provide medical, educational, financial, and psychosocial support and advocacy; and
- (10) Providing accurate written documentation of medical, genetic, and counseling information for families and health care professionals.

“Genetic counselor” means a person licensed under this chapter who engages in genetic counseling practice.

“Licensed genetic counselor” means an individual who holds a license in good standing to practice genetic counseling under this chapter.

**§ -2 Genetic counseling licensure program.** There is established a genetic counseling licensure program within the department to be administered by the director.

**§ -3 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the following powers and duties:

- (1) Examine and approve the qualifications of all applicants under this chapter and issue a license to each successful applicant granting permission to use the title of “licensed genetic counselor” or “genetic counselor” in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;

- (3) Administer, coordinate, and enforce this chapter and rules adopted pursuant thereto;
- (4) Discipline a licensed genetic counselor for any cause described by this chapter or for any violation of the rules, and refuse to license an individual for failure to meet licensure requirements or for any cause that would be grounds for disciplining a licensed genetic counselor; and
- (5) Work with the department of health's genetics program to assist with the implementation of this chapter and the rules adopted pursuant thereto.

**§ -4 Licensure required.** No individual shall purport to be a licensed genetic counselor or use the letters "L.G.C." in connection with the individual's name, or use any words or symbols indicating or tending to indicate that the individual is a licensed genetic counselor without meeting the applicable requirements and holding a license as set forth in this chapter.

**§ -5 Exemptions.** (a) This chapter does not prohibit any persons legally regulated in this state by any other law from engaging in the practice for which they are authorized as long as they do not represent themselves by the title of "genetic counselor" or "licensed genetic counselor". This chapter shall not prohibit the practice of nonregulated professions whose practitioners are engaged in the delivery of human services as long as these practitioners do not represent themselves as or use the title of "genetic counselor" or "licensed genetic counselor".

(b) Nothing in this chapter shall be construed to limit the activities and services of:

- (1) A student, intern, resident, or fellow in genetics or genetic counseling seeking to fulfill educational requirements to qualify for a license under this chapter if those activities and services constitute a part of that individual's supervised course of study;
- (2) An individual seeking to fulfill the post-degree practice requirements to qualify for licensing under this chapter, as long as the activities and services are supervised by a licensed genetic counselor or physician. A student, intern, resident, or fellow shall be designated by the title "intern", "resident", "fellow", or any other designation of trainee status; or
- (3) An American Board of Genetic Counseling or an American Board of Medical Genetics certified genetic counselor who is brought into the state as a consultant to train health care providers within the state. Nothing contained in this subsection shall be construed to permit students, interns, residents, fellows, or consultants to offer their services as genetic counselors or geneticists to any other person.

(c) Nothing in this chapter shall be construed to prevent a physician licensed to practice medicine in this state or an intern, fellow, or resident from performing genetic counseling within the person's scope of practice as long as the person is not in any manner held out to the public as a "genetic counselor" or "licensed genetic counselor".

(d) Nothing in this chapter shall be construed to prevent any licensed nurse in this state from performing genetic counseling within the nurse's scope of practice as long as the nurse is not in any manner held out to the public as a "genetic counselor" or "licensed genetic counselor".



(e) Nothing in this chapter shall be construed to prevent any licensed social worker, licensed psychologist, or licensed marriage and family therapist from practicing professional counseling in this state as long as the person is not in any manner held out to the public as a “genetic counselor” or “licensed genetic counselor” and does not hold out the person’s services as being genetic counseling.

§ -6 **Licensure requirements.** The director shall adopt rules as deemed necessary for the licensure of genetic counselors to protect public health and safety and may consider the following factors as evidence in determining whether an applicant is qualified to be licensed:

- (1) Board-certification by the American Board of Genetic Counseling or its equivalent; and
- (2) A report of any disciplinary action or rejection of license applications or renewals relating to genetic counseling practice taken against the applicant in another jurisdiction.

§ -7 **Provisional license.** (a) The director shall grant, upon application and payment of proper fees, provisional licensure to an individual who, at the time of application, is documented to have active candidate status by the American Board of Genetic Counseling or its equivalent.

(b) Individuals with provisional licenses shall meet the requirements for full licensure within the first two available American Board of Genetic Counseling or its equivalent Board examination cycles next following the filing of an application for provisional licensure.

§ -8 **Licensure by endorsement.** The director shall grant, upon application and payment of proper fees, licensure to an individual who, at the time of application, holds a valid license as a genetic counselor issued by another state, territory, or jurisdiction if the requirements for that certification or license are equal to, or greater than, the requirements of this chapter.

§ -9 **Issuance of license.** The director shall issue a license to any individual who meets the requirements of this chapter, upon payment of the prescribed fees.

§ -10 **Renewal of license.** (a) Every licensee or provisional licensee under this chapter shall renew a license granted pursuant to this chapter annually on or before June 30, with the first renewal deadline occurring on July 1, 2010. Failure to renew a license shall result in a forfeiture of the license. Licenses that have been so forfeited may be restored within one year of the expiration date upon payment of renewal and penalty fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and relicensure may require the individual to apply as a new applicant.

(b) Proof of maintenance of American Board of Genetic Counseling or its equivalent board certification shall be required for license renewal.

(c) Proof of continued active candidate status shall be required for provisional license renewal.

§ -11 **Application for licensure.** (a) Application for a license shall be made on an application form to be furnished by the department. An applicant shall provide the following information:

- (1) The applicant’s legal name;

- (2) The applicant's current residence and business mailing addresses and phone numbers;
  - (3) The applicant's social security number;
  - (4) The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1;
  - (5) Proof that the applicant is a United States citizen, a permanent resident, or is otherwise authorized to work in the United States;
  - (6) Disclosure of similar licensure in any state or territory;
  - (7) Disclosure of disciplinary action by any state or territory against any license held by the applicant; and
  - (8) Any other information the licensing authority may require to investigate the applicant's qualifications for licensure.
- (b) Failure to provide the information required by subsection (a) and pay the required fees shall be grounds to deny the application for licensure.

**§ -12 Fees; disposition.** (a) Application, examination, reexamination, license, renewal, late renewal penalty, inactive, and other reasonable and necessary fees relating to administration of this chapter shall be as provided in rules adopted by the director pursuant to chapter 91.

(b) Fees assessed shall defray all costs to be incurred by the director to support the operation of the genetic counselor licensure program.

**§ -13 Revocation, suspension, denial, or condition of licenses; fines.** In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, or may deny, revoke, suspend, fine, or condition in any manner any license for any one or more of the following acts or conditions on the part of the applicant or licensed genetic counselor:

- (1) Conviction by a court of competent jurisdiction of a crime that the director has determined to be of a nature that renders the individual convicted unfit to practice genetic counseling;
- (2) Failure to report in writing to the director any disciplinary decision or rejection of license application or renewal related to genetic practice issued against the licensed genetic counselor or the applicant in any jurisdiction within thirty days of the disciplinary decision or within twenty days of licensure;
- (3) Violation of recognized ethical standards for genetic counselors as set by the National Society of Genetic Counselors;
- (4) Use of fraud, deception, or misrepresentation in obtaining a license;
- (5) Revocation, suspension, or other disciplinary action by another state, territory, federal agency, or country against the licensed genetic counselor or applicant for any reason provided under this section; or
- (6) Other just and sufficient cause that renders an individual unfit to practice genetic counseling.

**§ -14 Hearings; appeals.** The director shall establish a hearing and appeals process for persons to appeal the revocation, suspension, denial, or condition of a license.

**§ -15 Prohibited acts; penalties.** (a) No individual shall:

- (1) Use in connection with the person's name any designation tending to imply that the individual is a licensed genetic counselor unless the individual is duly licensed and authorized under this chapter; or
  - (2) Make a representation that the individual is a licensed genetic counselor during the time the person's license issued under this chapter is forfeited, inactive, terminated, suspended, or revoked.
- (b) Any individual who violates this section shall be subject to a fine of not more than \$1,000 and each day's violation shall be deemed a separate offense.

**§ -16 Rules.** The department may adopt rules under chapter 91 as necessary for the purposes of this chapter."

**SECTION 3.** This act shall take effect on July 1, 2011; provided that section -3(2) and section -16 of the new chapter established by section 2 of this Act shall take effect upon approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 192

S.B. NO. 1338

A Bill for an Act Relating to Household Energy Demand.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that electric clothes dryers make up over ten per cent of many households' total energy use. Reducing the use of electric clothes dryers statewide could substantially decrease the amount of energy that households use and thereby reduce the amount of fossil fuels used to generate electricity in the State.

The legislature finds that simple clotheslines make efficient use of two abundant resources, the sun and the wind, to dry clothing. For aesthetic reasons, however, many homeowners' associations prohibit the use of clotheslines or render them ineffective through unreasonably restrictive regulation. The legislature further finds that although aesthetic concerns still exist today, they are not necessarily incompatible with environmental and energy security concerns, especially in the current context of high energy costs, climate change issues, and Hawaii's goal of increasing energy independence and maintaining an aesthetically pleasing environment.

The purpose of this Act is to prohibit real estate contracts, agreements, and rules from precluding or rendering ineffective the use of clotheslines on the premises of single-family dwellings or townhouses.

**SECTION 2.** Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§196- Placement of clotheslines.** (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a clothesline on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity may adopt rules that reasonably restrict the placement and use of clotheslines for the purpose of drying clothes on the premises of any single-family residential dwelling or townhouse; provided that those restrictions do not prohibit the use of clotheslines altogether. No private entity shall assess or charge any homeowner any fees for the placement of any clothesline.

(c) For the purposes of this section:

“Clothesline” means a rope, cord, wire, or similar device on which laundry is hung to dry.

“Private entity” means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner’s compliance is required.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon approval.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 193**

H.B. NO. 1422

A Bill for an Act Relating to Abandoned Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 290-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The counties may cause vehicles that have been abandoned to be taken into custody and disposed of. For the purposes of this subsection, a vehicle is “abandoned” if it is defined to be abandoned by an ordinance of the county in which the vehicle is located. In the absence of such an ordinance, a vehicle is “abandoned” if it is left unattended for a continuous period of more than twenty-four hours and it is unlawfully parked on [any]:

(1) Any public highway or other public property; or

(2) Any private road or private lands defined as a setback, shoulder, easement, or right of way that is adjacent to or part of a private or public highway[-]; provided that a vehicle on a private road shall be considered unlawfully parked if:

(A) It is deemed inoperable; and

(B) The owner or at least one of the co-owners of the private road requests in writing to the appropriate county authority for the removal of the vehicle.

The owner of a private road requesting the removal of an abandoned vehicle shall pay the county for the removal of the vehicle and is deemed to agree to indemnify and hold the county harmless for any claims against the county for the removal and disposal of the vehicle. The mayors of the several counties may designate an agency within their counties to carry out the functions and requirements of this section. The term “agency” means any office, department, or other governmental unit of the county.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009, and shall be repealed on January 1, 2010; provided that section 290-1, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 194

S.B. NO. 1329

A Bill for an Act Relating to Early Learning.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to improve early learning by:

- (1) Requiring the department of education, beginning with the 2010-2011 school year, to use successful assessment tools and protocols for determining a student's initial placement and for decision making about a student's movement between junior kindergarten, kindergarten, and into grade one; and
- (2) Clarifying provisions of the early learning system, established by Act 14, Special Session Laws of Hawaii 2008, including requiring development of a plan to ensure the needs of junior kindergarteners are addressed, authorizing designees for all members of the early learning council, and changing the name of the keiki first steps trust fund to the early learning trust fund.

SECTION 2. Section 302A-411, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall establish a two-tier junior kindergarten and kindergarten program to support the range of developmental abilities of children in junior kindergarten and kindergarten. ~~[Any school may]~~ Schools shall not move students between junior kindergarten and kindergarten [as the school deems appropriate. Junior kindergarten students may graduate directly to grade one.]<sup>1</sup>, except in cases where the movement is warranted and based on appropriate assessments determined by:

- (1) A qualified teacher with early childhood education background or experience; and
- (2) The formative and summative assessment of a student's academic, physical, social, and emotional abilities.

provided that, beginning with the 2010-2011 school year, the department shall use successful assessment tools and protocols for determining a student's initial placement and for decision making about a student's movement between tiers and into grade one. Junior kindergarten students may graduate directly to grade one when promotion is based on appropriate assessments and other progress data collected over time.”

SECTION 3. Section 302L-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established an early learning council which shall be attached to the department of education for administrative purposes only, notwithstanding any other law to the contrary. To the extent permissible by law, the council shall develop and administer the early learning system established in section 302L-2 to benefit all children throughout the State, from birth until the time they enter kindergarten. In developing the early learning system, the council shall, among other things:

- (1) Establish policies and procedures governing its operations;
- (2) Develop a plan, with goals and objectives, for the early learning system, including the development, execution, and monitoring of a phased implementation plan;
- (3) Coordinate, improve, and expand upon existing early learning programs and services for children from birth until the time they enter kindergarten;
- (4) Establish policies and procedures to include existing early learning programs and services;
- (5) Establish additional early learning programs and services;
- (6) Establish policies and procedures governing the inclusion of children with special needs;
- (7) Develop incentives to enhance the quality of programs and services within the early learning system;
- (8) Coordinate efforts to develop a highly-qualified, stable, and diverse workforce, including:
  - (A) Ensuring that more early childhood educators and administrators, existing or potential, have opportunities to receive early childhood education degrees, including offering higher education scholarships;
  - (B) Increasing the availability of early childhood education coursework, including distance learning courses and community-based early childhood education training;
  - (C) Providing access to continuing professional development for all educators and administrators;
  - (D) Establishing a system for awarding appropriate credentials to educators and administrators, as incentives to improve the quality of programs and services, relevant to the various early learning approaches, service deliveries, and settings, such as for experience or coursework or degrees completed;
  - (E) Providing consultation on the social-emotional development of children; and
  - (F) Providing substitute teacher allowances;
- (9) Develop and implement methods of maximizing the involvement of families, caregivers, and teachers in the early learning system;
- (10) Develop an effective, comprehensive, and integrated system to provide training and technical support to programs and services within the early learning system;
- (11) Develop standards of accountability to ensure that high-quality early learning experiences are provided by programs and services of the early learning system;
- (12) Collect, interpret, and release data relating to early learning in the State;
- (13) Recommend the appropriate proportion of state funds that should be distributed to programs and services across the early learning

- system, to ensure the most effective and efficient allocation of fiscal resources within the early learning system;
- (14) Develop a plan to ensure that the needs of junior kindergarteners are addressed, including:
    - (A) Recommending an appropriate and effective curriculum;
    - (B) Establishing criteria for junior kindergarten teachers and aides;
    - (C) Incorporating Hawaii's preschool content standards for junior kindergarteners; and
    - (D) Recommending an effective transition from the early learning system to kindergarten;
  - [(44)] (15) Promote awareness of early learning opportunities to families and the general public; and
  - [(45)] (16) Consult with community groups, including statewide organizations that are involved in early learning professional development, policy and advocacy, and early childhood programs, to broaden the council's knowledge of early learning.
  - (b) The council shall consist of the following voting members:
    - (1) The superintendent of education or the superintendent's designee;
    - (2) The director of human services or the director's designee;
    - (3) The director of health or the director's designee;
    - (4) The president of the University of Hawaii or the president's designee;
    - (5) A representative of center-based program providers[;] or the representative's designee;
    - (6) A representative of family child care program providers[;] or the representative's designee;
    - (7) A representative of family-child interaction learning program providers[;] or the representative's designee;
    - (8) A representative of philanthropic organizations that support early learning[; and] or the representative's designee;
    - (9) A representative from a Head Start provider agency or the representative's designee; and
    - [(9)] (10) Two representatives of the Hawaii Council of Mayors[-] or each representative's respective designee.

The council shall invite the director of the Hawaii head start state collaboration office, the chief executive officer of the Kamehameha Schools, and the executive director of the Hawaii Association of Independent Schools, or their designees, to serve as voting members of the council.

Except for the superintendent of education, directors of state departments, president of the University of Hawaii, director of the Hawaii head start state collaboration office, chief executive officer of the Kamehameha Schools,<sup>2</sup> executive director of the Hawaii Association of Independent Schools,<sup>3</sup> and the two representatives of the Hawaii Council of Mayors, or their respective designees, the members shall be nominated and, by and with the advice and consent of the senate, appointed by the governor."

SECTION 4. Section 302L-5, Hawaii Revised Statutes, is amended to read as follows:

**"[H§302L-5]] [Keiki first steps] Early learning trust fund.** There is established within the state treasury the [keiki first steps] early learning trust fund, to be administered by the early learning council, into which shall be deposited all moneys received by the council in the form of:

- (1) Fees;
- (2) Grants;
- (3) Donations;
- (4) Appropriations made by the legislature to the fund; and
- (5) Revenues regardless of their source,

and earnings on moneys in the fund. Moneys in the fund shall be used for the early learning system. Expenditures from the fund may be made by the council without appropriation or allotment.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. Text missing.
2. Prior to amendment “and” appeared here.
3. Prior to amendment “or their designees,” appeared here.

ACT 195

S.B. NO. 203

A Bill for an Act Relating to Contractors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as provided in subsections (a), (b), (d), and (e), any person who violates or fails to comply with this chapter shall be fined not less than \$100 or more than \$5,000 for each violation; provided that any person who violates section 444-9 shall be fined:

- (1) [~~\$500~~] \$2,500 or forty per cent of the total contract price, whichever is greater, for the first offense;
- (2) [~~\$1,000~~] \$3,500 or forty per cent of the total contract price, whichever is greater, for the second offense; and
- (3) \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense,

and when the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, all tools, implements, documents, materials, or any other property used by the person in activities violating section 444-9 shall be subject to forfeiture as provided by section 444-23.5 and shall be turned over to the department for disposition under that section.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)



## ACT 196

S.B. NO. 1461

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. The legislature finds that Act 355, Session Laws of Hawaii 1997, authorized the governor to convert the State of Hawaii payroll payment basis from predicted payroll to after-the-fact payroll commencing with the June 30, 1998, pay day in fiscal year 1997-1998, which was delayed to July 1, 1998, in fiscal year 1998-1999. That "payroll lag" measure delayed state expenditures to generate a one-time windfall savings of approximately \$51,500,000.

The legislature further finds that advancing the filing and payment of monthly, quarterly, and semi-annual general excise taxes due, from the last calendar day of the month following the month, quarter, or half-year in which taxes accrue to the twentieth day of that month, quarter, or half-year will generate a one-time estimated revenue of \$75,000,000 to \$100,000,000 in a way analogous to the effect of the payroll lag measure, but in reverse fashion, by advancing receipt of revenues within one fiscal year.

The purpose of this Act is to:

- (1) Advance the filing and payment of monthly, quarterly, and semi-annual general excise taxes due to an earlier date to generate a one-time windfall revenue for the State;
- (2) Require any person who is required to electronically file or remit a federal return or taxes to also electronically file and remit a state return of all state taxes to the department of taxation; and
- (3) Require any employer who is required to remit any withheld taxes to the federal government on a semi-weekly schedule, to also remit the complete amount of tax withheld to the department of taxation on a semi-weekly schedule.

SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is amended to read as follows:

**"§231-9.9 [Payment] Filing and payment of taxes by electronic funds transfer.** (a) The director of taxation is authorized to require every person whose tax liability for any one taxable year exceeds \$100,000 and who files a tax return for any tax, including consolidated filers, to remit taxes by one of the means of electronic funds transfer approved by the department; provided that for withholding taxes under section 235-62, electronic funds transfers shall apply to annual tax liabilities that exceed \$40,000. Notwithstanding the tax liability thresholds in this subsection, the director of taxation is authorized to require any person who is required to electronically file a federal return or electronically remit any federal taxes to the federal government, to electronically file a state return and electronically remit any state taxes under title 14 to the department. The director is authorized to grant an exemption to the electronic filing and payment requirements for good cause.

(b) Any person who files a tax return for any tax and is not required by subsection (a) to remit taxes by means of electronic funds transfer may elect to remit taxes by one of the means of electronic funds transfer approved by the department with the approval of the director of taxation.

(c) If a person who is required under subsection (a) to file a return electronically or remit taxes by one of the means of electronic funds transfer ap-

proved by the department fails to file electronically or to remit the taxes using an approved method on or before the date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to neglect, there shall be added to the tax required to be so remitted a penalty of two per cent of the amount of the tax. The penalty under this subsection is in addition to any penalty set forth in section 231-39.

(d) No later than twenty days prior to the convening of each regular session, the department shall submit a report to the legislature containing:

- (1) The number of taxpayers who were assessed the two per cent penalty pursuant to subsection (c);
- (2) The amounts of each assessment; and
- (3) The total amount of assessments collected for the previous year."

SECTION 3. Section 235-62, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return; provided that each employer whose liability for taxes withheld exceeds \$40,000 annually shall remit the complete amount of tax withheld on a semi-weekly schedule. Notwithstanding the tax liability threshold in this subsection, the director of taxation is authorized to require any employer who is required to remit any withheld taxes to the federal government on a semi-weekly schedule, to remit the complete amount of tax withheld to the department on a semi-weekly schedule. The director of taxation may grant an exemption to the requirement to remit the complete amount of tax withheld on a semi-weekly schedule for good cause."

SECTION 4. Section 237-30, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The taxes levied hereunder shall be payable in monthly installments on or before the ~~[last]~~ twentieth day of the calendar month following the month in which they accrue. The taxpayer ~~[shall]~~, on or before the ~~[last]~~ twentieth day of the calendar month following the month in which the taxes accrue, shall make out and sign a return of the installment of tax for which the taxpayer is liable for the preceding month and transmit the same, together with a remittance, in the form required by section 237-31, for the amount of the tax, to the office of the department of taxation in the appropriate district hereinafter designated.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the ~~[last]~~ twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April ~~[30;]~~ 20, July ~~[31;]~~ 20, October ~~[31;]~~ 20, and January ~~[31]~~ 20 or, for fiscal year taxpayers, on or before the ~~[last]~~ twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the ~~[last]~~ twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the ~~[last]~~ twentieth day of the

calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July [34] 20 and January [34] 20 or, for fiscal year taxpayers, on or before the [last] twentieth day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability, provided the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section."

## PART II

SECTION 5. Act 239, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect on January 1, 2008; provided that this Act shall be repealed on December 31, [2009,] 2010, and section 237-24.3, Hawaii Revised Statutes, and section 237-24.7, Hawaii Revised Statutes, shall be reenacted in the form in which they read on December 31, 2007."

SECTION 6. The aggregate tax exemption from the amendment in Act 239, Session Laws of Hawaii 2007, shall not exceed \$400,000 per taxable year ending on or between January 1, 2010 and January 1, 2011.

## PART III

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act, upon its approval, shall apply to returns and payments due after May 31, 2009; provided that part II of this Act shall take effect upon approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 197

S.B. NO. 522

A Bill for an Act Relating to Land Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of the Act is to enable the counties to promptly track property ownership, encumbrances, restrictions, uses, and sales prices of real property to enable more accurate real property tax assessments by requiring the assistant registrar of the land court to provide, within ten days after each week and without charge, an image and index of all deeds and other voluntary instruments, writs, or other process that have been recorded with the assistant registrar that week relating to registered land in all the counties, to the county designated in a memorandum of understanding agreed upon by the counties to

act as a central clearinghouse to deliver the images and index to the other counties without charge.

SECTION 2. Section 501-107, Hawaii Revised Statutes, is amended to read as follows:

**“§501-107 Entry record; duplicates and certified copies.** The assistant registrar shall keep a record in which shall be entered all deeds and other voluntary instruments, and all copies of writs or other process filed or recorded with the assistant registrar relating to registered land. The assistant registrar shall note in the record the date of reception of all instruments. The instruments shall be stamped with the date, hour, and minute of reception and shall be regarded as registered from the date and time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date.

Every deed or other instrument, whether voluntary or involuntary, so filed or recorded with the registrar or assistant registrar shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records relating to registered land in the office of the registrar or of the assistant registrar shall be open to the public in the same manner as probate records are open, subject to [such] reasonable regulations as the registrar, under the direction of the court, may make.

Certified copies of all instruments filed or recorded and registered may also be obtained at any time on payment of the assistant registrar's fees.

Within ten days after the end of each week, the assistant registrar shall deliver or forward by mail or electronic transmission, without charge, an image and index of all deeds and other voluntary instruments, writs, or other process that have been filed or recorded with the assistant registrar during each week relating to registered land in all the counties, to the county designated to act as a central clearinghouse in a memorandum of understanding agreed upon by the counties. The central clearinghouse shall deliver the images and index to the other counties without charge. The index shall include the following for each instrument:

- (1) Document number;
- (2) Certificate number;
- (3) Date of the filing;
- (4) Type of document;
- (5) Names of grantor and grantee;
- (6) Current tax map key number; and
- (7) Location of the real property by island.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 198

H.B. NO. 371

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that current technology in generating electric power allows for a variety of liquid fuels. While diesel fuel and fuel oil are used in older electric power generation technology, newer technology permits the use of multiple types of liquid fuel, some of which were previously used for transportation purposes, such as naphtha.

Upon finding that the State's highway tax law did not specifically address naphtha when it is used for electric-power generation, the legislature passed Act 103, Session Laws of Hawaii 2007 (Act 103), that imposed a 1 cent per gallon tax on naphtha when sold for use in a power-generating facility. The provision imposing the 1 cent per gallon tax is scheduled to sunset on December 31, 2009.

The purpose of this Act is to:

- (1) Extend by three years the sunset provision in Act 103 relating to the tax on naphtha sold for use in a power-generating facility; and
- (2) Increase the tax from 1 cent per gallon to 2 cents per gallon.

SECTION 2. Section 243-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every distributor, in addition to any other taxes provided by law, shall pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons who are not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel, knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon, shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax imposed are as follows:

- (1) For each gallon of diesel oil, 2 cents;
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 2 cents;
- (3) For each gallon of naphtha sold for use in a power-generating facility, ~~[1 cent];~~ 2 cents;
- (4) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 17 cents state tax, and in addition thereto an amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5;
- (5) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 17 cents state tax, and in addition thereto an amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5;
- (6) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 17 cents state tax, and in addition thereto an

amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5; and

- (7) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 17 cents state tax, and in addition thereto an amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from any other evidence as the department may require, that liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall adopt rules to administer such refunds."

SECTION 3. Act 103, Session Laws of Hawaii 2007, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to this Act to:
  - (A) The definition of "power-generating facility" in section 243-1, Hawaii Revised Statutes; and
  - (B) Section 243-4(a), Hawaii Revised Statutes<sup>[5]</sup>, shall be repealed on December 31, ~~[2009,]~~ 2012, and section 243-4(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) The rate of tax for naphtha as provided for in section 243-4(a)(3), Hawaii Revised Statutes, shall be effective retroactively and apply to any imposition of the fuel tax on naphtha sold for use in a power-generating facility."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**SPECIAL SESSION OF 2009**

**Session Laws of Hawaii  
Passed By The  
Twenty-Fifth State Legislature  
Special Session  
2009**

## ACT 1

H.B. NO. 31

A Bill for an Act Relating to Employment Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§378- Employer inquiries into and consideration of credit history or credit report.** (a) Notwithstanding section 378-2(8):

- (1) Inquiry into and consideration of a prospective employee's credit history or credit report may take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification;
- (2) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers who are expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law;
- (3) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to managerial or supervisory employees; and
- (4) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

(b) For the purposes of this section:

“Managerial employee” means an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.

“Supervisory employee” means an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in



connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

SECTION 2. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

**“§378-2 Discriminatory practices made unlawful; offenses defined.** It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:
  - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
  - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
  - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;
  - (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
  - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;
- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; ~~[or]~~
- (7) For any employer or labor organization to refuse to hire or employ~~;~~ or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph,

the term “breastfeeds” means the feeding of a child directly from the breast[-]; or

- (8) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual’s credit history or credit report, unless the information in the individual’s credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 2**

H.B. NO. 183

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The legislature finds that the thirteen-member Hawaii teacher standards board is responsible for establishing standards for the issuance and renewal of licenses for teachers; serves as the adjudicator for appeals relating to licensing, including issuance or nonissuance of licenses, and the suspension, nonrenewal, and revocation of licenses; and approves teacher education programs and the professional development of teachers.

The purpose of this part is to make clarifying and other amendments to:

- (1) Increase the membership on the Hawaii teacher standards board from thirteen to fifteen with two public members representing the community;
- (2) Allow the board to employ an executive director for a term of up to four years, who shall be appointed by the board of education, and also allow the board to terminate the executive director’s contract for cause;
- (3) Require the board to submit its annual report to the board of education;
- (4) Authorize the board to determine the manner in which licensing fees are collected;
- (5) Authorize the board to adopt, amend, repeal, or suspend the policies and standards of the board;
- (6) Authorize the board to grant additional licensing extensions through June 30, 2010;
- (7) Make permanent the board’s authority to temporarily suspend its rules in extenuating circumstances;

- (8) Make permanent the board's authority to amend licensing-related fees and set or amend other charges related to the performance of its duties; and
- (9) Beginning July 1, 2009, require the board, department of education or the charter school administrative office to implement interim policies and procedures for the mutual sharing of data necessary for licensing and verifying the status of teachers.

SECTION 2. Section 302A-801, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-801 Hawaii teacher standards board established.** (a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of ~~[thirteen]~~ fifteen members, including not less than six licensed teachers regularly engaged in teaching[;] at the time of the appointment, three educational officers[;] employed at the time of the appointment, the chairperson of the board of education or the chairperson's designee, the superintendent or the superintendent's designee, a representative of independent schools, ~~[and]~~ the dean of the University of Hawaii college of education or the dean's designee[;] and two members of the public; provided that the dean's designee shall be chosen from the member institutions of the teacher education coordinating committee established under section ~~[§304A-1202]~~ [§304A-1202].

(b) Except for the chairperson of the board of education, ~~[the]~~ superintendent, and ~~[the]~~ dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, ~~[and]~~ organizations representative of the constituencies of the board[;], and current members of the board; provided that the two members of the public shall be from lists of qualified nominees submitted to the governor by the Hawaii Business Roundtable, Hawaii P-20 council, and Hawaii workforce development council. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel from all islands.

(c) Appointed board members shall serve not more than three consecutive three-year terms[;] provided that the initial terms of the appointed members that commence after June 30, 2000, shall be staggered, as follows:

- (1) Three members to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) One member to serve a one-year term].

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

(f) The board may employ an executive director for a term of up to four years, who shall be appointed by the board of education without regard to chapters 76 and 89; provided that the board shall submit a nominee to the board of education for approval or disapproval; provided further that if the nominee is disapproved, the board shall submit another nominee to the board of education for approval or disapproval.

The board may terminate the executive director's contract for cause; provided that the board shall submit the recommendation for termination to the board of education for approval or disapproval."

SECTION 3. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-803 Powers and duties of the board.** (a) In addition to establishing standards for the issuance and renewal of licenses and any other powers and duties authorized by law, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, or repealing the rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor ~~[and]~~, the legislature, and the board of education on the board's operations and from the 2007-2008 school year, submitting a summary report every five years of the board's accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing fees in accordance with chapter 91~~[-including the collection of fees by means of mandatory payroll deductions, which shall]~~ and determining the manner by which fees are collected and subsequently [be] deposited into the state treasury and credited to the Hawaii teacher standards board special fund;
- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, revoking, suspending, and reinstating licenses;
- (9) Reviewing reports from the department on individuals hired on an emergency basis;
- (10) Applying licensing standards on a case-by-case basis and conducting licensing evaluations;
- (11) Preparing and disseminating teacher licensing information to schools and operational personnel;
- (12) Approving teacher preparation programs;
- (13) Administering reciprocity agreements with other states relative to licensing;
- (14) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- (15) Participating in efforts relating to teacher quality issues, ~~[conducting]~~ professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; ~~[and]~~
- (16) Adopting applicable rules and procedures~~[-]; and~~
- (17) Adopting, amending, repealing, or suspending the policies and standards of the board.

(b) If, in accordance with chapter 92, the board determines, on a case-by-case basis, that extenuating circumstances exist to justify the suspension, the board may temporarily suspend its rules, or any portion thereof. The board shall establish, in accordance with chapter 91, procedures for the suspension of its

rules. When determining whether to suspend its rules, the board shall also establish the length of time for which the suspension shall be in effect.

(c) The board, in accordance with chapter 92, may also amend licensing-related fees and set or amend other charges related to the performance of its duties."

SECTION 4. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-805 Teachers; license required; renewals.** (a) Beginning July 1, 2002, all [new] licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields and levels specified on the licenses and shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards;
- (2) Show evidence of successful teaching in the previous five years; and
- (3) Satisfy the board's requirements for renewal of licenses.

(b) Teachers whose licenses expire on June 30, 2002, or June 30, 2003, shall be granted an automatic extension of two years.

(c) The board, at its discretion, through June 30, 2010, may grant additional extensions. Any previously-approved extensions shall be deemed valid as issued.

(d) No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91."

SECTION 5. Act 263, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

~~"SECTION 4. This Act shall take effect on July 1, 2007[; provided that on July 1, 2009, section 2 of this Act shall be repealed and section 302A-803, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2007]."~~

SECTION 6. (a) Beginning on July 1, 2009, the Hawaii teacher standards board, department of education, and charter school administrative office shall implement interim policies and procedures for the mutual sharing of data necessary for licensing and verifying the status of teachers, including criminal background checks; employment status and work sites; license test information; license validity, fields, and levels; and academic transcripts and program completion information.

(b) The interim policies and procedures may be amended to reflect the recommendations of the Hawaii teacher standards board to coordinate the creation of a data interface network consisting of teacher education institutions and the department of education to support the free interchange of information valuable to all of the participating organizations, pursuant to section 10 of this Act.

(c) The board, department of education, charter school administrative office, and members of the teacher education coordinating committee shall also develop and implement interim policies and procedures for the mutual sharing of license and employment data necessary for the teacher education institutions to comply with the requirements of the Higher Education Opportunity Act, in-

cluding criminal background checks; employment status and work sites; license validity, fields, and levels; and teaching performance.

## PART II

SECTION 7. In 2008, Senate Concurrent Resolution No. 83, S.D. 1, requested the auditor to conduct a study on the appropriate accountability structure for the Hawaii teacher standards board, and to report the findings and recommendations to the 2009 legislature. Report No. 09-05, Study on the Appropriate Accountability Structure of the Hawai'i Teacher Standards Board, submitted in February 2009, focused on determining whether the board has delivered an effective licensing and re-licensing program, which is its core function. Using the department of commerce and consumer affairs as the model for boards and commissions administratively attached to an agency, the report compared that model with the Hawaii teacher standards board and examined other states for alternatives for licensing programs.

The auditor's report found a number of problems, including ineffective management of the licensing function, lack of oversight, and miscommunication between the Hawaii teacher standards board and department of education regarding responsibilities and accountability. While the auditor's report provided considerable useful information, its release in the middle of the 2009 legislative session did not allow time to develop meaningful responses.

The purpose of this part is to develop specific recommendations to address the concerns raised in the auditor's report.

SECTION 8. (a) The legislative reference bureau shall review the findings of the auditor's Report No. 09-05, and other information as appropriate, and make recommendations, including proposed legislation, regarding:

- (1) Whether there is a need for oversight of the Hawaii teacher standards board, and how oversight is provided for similar boards; and
  - (2) How to strengthen and clarify interagency roles, responsibilities, and relationships between the board, department of education, and teacher education coordinating committee.
- (b) The legislative reference bureau shall submit its findings and recommendations, including all proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 9. (a) The dean of the University of Hawaii at Manoa college of education shall convene a working group to review and make recommendations to address:

- (1) Licensing rules and their impact on teacher workforce needs in Hawaii;
- (2) Relicensing and tiered licensing options to ensure effective teachers and continuing development of teachers;
- (3) Streamlining processes for reviewing out-of-state and military applicants for licensure;
- (4) Alignment of licensing standards and requirements with the federal No Child Left Behind Act;
- (5) Teacher preparation program alignment with national standards and the role of national accreditation of teacher preparation programs in Hawaii; and
- (6) The role of higher education institutions in assisting teachers in achieving National Board certification.

- (b) The working group shall consist of seven members as follows:
  - (1) The dean of the University of Hawaii at Manoa college of education, or the dean's designee;
  - (2) The superintendent of education, or the superintendent's designee;
  - (3) The chairperson of the Hawaii teacher standards board, or the chairperson's designee;
  - (4) The executive director of the Hawaii P-20 council, or the executive director's designee;
  - (5) The executive director of the Hawaii state teachers association, or the executive director's designee;
  - (6) The division administrator of the professional and vocational licensing division of the department of commerce and consumer affairs, or the division administrator's designee; and
  - (7) A member of the National Milken Educators of Hawaii.

The working group may consult with other educational and licensing organizations and individuals, as appropriate. The working group shall cease to exist on June 30, 2010.

(c) The dean shall submit the findings and recommendations of the working group, including any proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

**SECTION 10.** (a) The Hawaii teacher standards board shall review the findings of the auditor's Report No. 09-05, and shall make recommendations for policy and procedural changes necessary to refocus and support the purpose of the Hawaii teacher standards board. At a minimum, the board shall consider:

- (1) Procedures to streamline the appeals process, pursuant to section 302A-807, Hawaii Revised Statutes;
- (2) Amendments to the current licensing fees, if required, to meet the operating costs associated with the Hawaii teacher standards board;
- (3) Requirements for training of licensing and administrative personnel to provide increased accessibility and customer service;
- (4) Procedures to improve the coordination of the interim policies and procedures related to the creation of a data interface network consisting of teacher education institutions and the department of education to support the free interchange of information valuable to all of the participating organizations; and
- (5) Recommendations as to whether the board may be authorized to request attendance of a deputy attorney general at the meetings of the board.

(b) The Hawaii teacher standards board shall submit its findings and recommendations, including any proposed legislation and budget requests, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

### PART III

**SECTION 11.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 12.** This Act shall take effect on July 1, 2009; provided that on July 1, 2010, section 4 of this Act shall be repealed and section 302A-805, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 3

H.B. NO. 343

## A Bill for an Act Relating to Rural Primary Health Care Training.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is a severe shortage of primary care health providers in the state, which threatens the health of our residents and affects health care costs. This shortage has pushed the federal government to designate a number of areas in the state, particularly rural areas, as medically underserved areas, health professional shortage areas, or as having medically underserved populations.

The legislature further finds that family physicians are well-suited to rural health care due to the broad scope of their practice, which encompasses inpatient, outpatient, and nursing home settings, and addresses acute, chronic, and preventive health care across the life cycle. Many family physicians also provide maternity care, family planning, and mental health services through their practices.

The University of Hawaii John A. Burns school of medicine currently offers a three-year residency program in family medicine. The program emphasizes a system-based and interdisciplinary team approach to health care. The mission of the family medicine residency program is to meet the needs of rural and medically underserved areas and populations in Hawaii in a culturally sensitive and medically appropriate manner. Family medicine program residents provide not only health care but also education and outreach at schools and community events. Presently, family medicine program residents spend two months in a federally-funded rural health care training demonstration project, initiated in Hilo in 2006, in which medical residents learn how to provide health care to medically underserved patients in rural areas as they rotate among private physician offices, emergency departments, and the community, providing outreach and education. It is anticipated that the Hilo rural health training program will be duplicated on Kauai. Additional training sites will be developed in conjunction with the health master planning process underway on Maui and with the hospital and community health center system on Kauai. As these sites are being developed, the curriculum can be structured so that family medicine residents have the opportunity to rotate to neighbor island sites other than Hilo.

The purpose of this Act is to increase access to primary health care services provided by family physicians or residents in the family medicine residency program at the University of Hawaii to medically underserved residents in rural areas of the state by appropriating funds to:

- (1) Support and expand the family medicine residency program of the University of Hawaii John A. Burns school of medicine's department of family medicine and community health to provide rural primary health care services; and
- (2) Develop a permanent statewide rural primary health care training program in each county, beginning in the county of Hawaii, to expand the rural health care training available for individuals in the family medicine residency program of the University of Hawaii John A. Burns school of medicine.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$70,000 or so much thereof as may be necessary for fiscal year 2009-2010 to support and expand the family medicine residency program at the University of Hawaii John A. Burns school of medicine's



department of family medicine and community health to provide rural primary health care services.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$70,000 or so much thereof as may be necessary for fiscal year 2010-2011 to develop a statewide rural primary health care training program in each county, beginning in the county of Hawaii to provide family physicians to rural areas and improve health care access for the people of Hawaii.

SECTION 4. The sums appropriated in sections 2 and 3 shall be expended by the University of Hawaii John A. Burns school of medicine for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 4

H.B. NO. 358

A Bill for an Act Relating to Drug Treatment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-600.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§706-600.5]]~~ Definitions of terms in this chapter.** In this chapter, unless a different meaning plainly is required:

~~[(1)]~~ “Day” means a twenty-four-hour period of time.

~~[(2)]~~ “Month” means a thirty-day period of time.

“Secure drug treatment facility” means a facility employing security protocols modeled after a minimum-security detention center, including continuous direct supervision.

~~[(3)]~~ “Year” means a three hundred sixty-five-day period of time.”

SECTION 2. Section 706-605.1, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) As used in this section, “alternative programs” means programs ~~[which,] that,~~ from time to time, are created and funded by legislative appropriation or federal grant naming the judiciary or one of its operating agencies as the expending agency and ~~[which] that~~ are intended to provide an alternative to incarceration. Alternative programs may include:

- (a) House arrest, or curfew using electronic monitoring and surveillance, or both;
- (b) Drug court programs for defendants with assessed alcohol or drug abuse problems, or both;
- (c) Therapeutic residential and nonresidential programs~~], including secure drug treatment facilities;~~
- (d) A program of regimental discipline pursuant to section 706-605.5; and

- (e) Similar programs created and designated as alternative programs by the legislature or the administrative director of the courts for qualified defendants who do not pose significant risks to the community.”

SECTION 3. Section 706-622.5, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated ~~[in order]~~ to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history of relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program ~~[and]~~, comply with deadlines for entering into the substance abuse treatment program[-], and reside in a secure drug treatment facility.”

SECTION 4. Section 706-622.9, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be sentenced as provided in this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history or relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program ~~[and]~~, comply with deadlines for entering into the substance abuse treatment program[-], and reside in a secure drug treatment facility.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 5

H.B. NO. 754

A Bill for an Act Relating to the Hawaii Tourism Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201B- Applicability of Hawaii public procurement code; convention center contractor; construction contracts.** The construction contracts for the maintenance of the convention center facility by the private contractor that operates the convention center, by its direct or indirect receipt of, and its expenditure of, public funds from the department of business, economic development, and tourism or the authority, or both, shall be subject to part III of chapter 103D.”

SECTION 2. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;
- (10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file; and
- ~~[(11) For operation of concession or concession spaces at the convention center under chapter 201B; and~~

- (12)] (11) For any of the operations of the Hawaii health systems corporation and its regional system boards.”

SECTION 3. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

**“§201-3 Specific research and promotional functions of the department.** Without prejudice to its general functions and duties, the department of business, economic development, and tourism shall have specific functions in the following areas:

- (1) Industrial development. The department shall ~~[determine]~~:
  - (A) Determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; ~~[develop]~~
  - (B) Develop through research projects and other means new and improved industrial products and processes; ~~[promote]~~
  - (C) Promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State's industrial products; ~~[disseminate]~~
  - (D) Disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the ~~[State; assist] state~~;
  - (E) Assist associations of producers and distributors of industrial products to introduce these products to consumers; and ~~[make]~~
  - (F) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (2) Land development. The department shall ~~[encourage]~~:
  - (A) Encourage the most productive use of all land in the ~~[State] state~~ in accordance with a general plan developed by the department; ~~[encourage]~~
  - (B) Encourage the improvement of land tenure practices on leased private lands; ~~[promote]~~
  - (C) Promote an informational program directed to landowners, producers of agricultural and industrial commodities, and the general public regarding the most efficient and most productive use of the lands in the ~~[State;] state~~; and ~~[make]~~
  - (D) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (3) Credit development. The department shall ~~[conduct]~~:
  - (A) Conduct a continuing study of agricultural and industrial credit needs; ~~[encourage]~~
  - (B) Encourage the development of additional private and public credit sources for agricultural and industrial enterprises; ~~[promote]~~
  - (C) Promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform producers of agricultural and industrial products as to the manner in which to qualify for loans; and ~~[make]~~
  - (D) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;

- (4) Promotion. The department shall [disseminate]:
- (A) Disseminate information developed for or by the department pertaining to economic development to assist present industry in the [State, attract] state;
  - (B) Attract new industry and investments to the State[.]; and [assist]
  - (C) Assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products.

The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and other promotional and publicity devices as may be appropriate;

- [5] ~~Tourism research and statistics. The department shall maintain a program of research and statistics for the purpose of:~~
- ~~(A) Measuring and analyzing tourism trends;~~
  - ~~(B) Providing information and research to assist in the development and implementation of state tourism policy;~~
  - ~~(C) Encouraging and arranging for the conduct of tourism research and information development through voluntary means or through contractual services with qualified agencies, firms, or persons; and~~
  - ~~(D) Providing tourism information to policy makers, the public, and the visitor industry. This includes:~~
    - ~~(i) Collecting and publishing visitor related data including visitor arrivals, visitor characteristics and expenditures;~~
    - ~~(ii) Collecting and publishing hotel related statistics including the number of units available, occupancy rates, and room rates;~~
    - ~~(iii) Collecting and publishing airline related data including seat capacity and number of flights;~~
    - ~~(iv) Collecting information and conducting analyses of the economic, social, and physical impacts of tourism on the State;~~
    - ~~(v) Conducting periodic studies of the impact of ongoing marketing programs of the Hawaii tourism authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underutilized destinations; and~~
    - ~~(vi) Cooperate with the Hawaii tourism authority and provide it with the above information in a timely manner;]~~ and
- [6] (5) Self-sufficiency standard. The department shall establish and update biennially a self-sufficiency standard that shall incorporate existing methods of calculation, and shall reflect, at a minimum, costs relating to housing, food, child care, transportation, health care, clothing and household expenses, federal and state tax obligations, family size, children's ages, geography, and the number of household wage earners. The department shall report to the legislature concerning the self-sufficiency standard no later than twenty days prior to the convening of the regular session of 2009, and every odd-numbered year thereafter. The recommendations shall address, among other things, the [utilization] use of any federal funding that may be available for the purposes of establishing and updating the self-sufficiency standard.

The department shall be the central agency to coordinate film permit activities in the ~~[State-]~~ state.”

SECTION 4. Section 201B-2, Hawaii Revised Statutes, is amended to read as follows:

**“§201B-2 Hawaii tourism authority; establishment; board; ~~[staff-]~~ president and chief executive officer.** (a) There is established the Hawaii tourism authority, which shall be a body corporate and a public instrumentality of the State, for the purpose of implementing this chapter. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes only.

(b) The authority shall be headed by a policy-making board of directors ~~[which consists]~~ that shall consist of twelve ~~[public, voting]~~ members~~[-and four ex officio nonvoting members];~~ provided that:

- (1) ~~[Twelve public, voting]~~ The members shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (2) The ~~[twelve public, voting]~~ members shall ~~[be composed of]~~ include at least one representative each from the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; the remaining ~~[public]~~ members shall be appointed at-large;
- (3) ~~[Of the twelve public, voting members, three]~~ Three members shall be appointed by the governor from a list of three names submitted for each appointment by the president of the senate, and three members shall be appointed by the governor from a list of three names submitted for each appointment by the speaker of the house of representatives; provided that if fewer than three names are submitted for each appointment, the governor may disregard the list;
- (4) At least six ~~[of the twelve public, voting]~~ members shall have knowledge, experience, and expertise in the area of visitor industry management, marketing, promotion, transportation, retail, entertainment, or visitor attractions, and at least one shall have knowledge, experience, and expertise in the area of Hawaiian cultural practices; provided that no more than three members shall represent, be employed by, or be under contract to any sector of the industry represented on the board;
- (5) The governor shall make appointments to ensure the fulfillment of all requirements; provided that any appointments made after July 1, 2002, shall be made to fulfill the requirements in place when the appointments are made;
- ~~[(6) The director of business, economic development, and tourism, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(7) The director of transportation, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(8) The chairperson of the board of land and natural resources, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(9) The executive director of the state foundation on culture and the arts, or a designated representative, shall be an ex officio nonvoting member;]~~ and
- ~~[(10)]~~ (6) No person who has served as a member of the board of directors of the Hawaii Visitors and Convention Bureau shall be eligible to sit as a ~~[public, voting]~~ member of the board of directors of the Hawaii tourism authority until at least two years have expired between

the person's termination from service on the Hawaii Visitors and Convention Bureau board and the person's appointment to the authority's board of directors.

(c) ~~[The public members]~~ Members shall be appointed by the governor for terms of four years. Each ~~[public]~~ member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall be applicable insofar as it relates to the number of terms and consecutive number of years a member may serve on the board.

(d) The board shall elect a chairperson from among the ~~[voting]~~ members. ~~[The director of business, economic development, and tourism or the designated representative shall not be chairperson of the board.]~~

(e) Seven ~~[voting]~~ members shall constitute a quorum and a minimum of seven affirmative votes shall be necessary for all actions by the authority. The members shall serve without compensation, but shall be reimbursed for expenses, including traveling expenses, necessary for the performance of their duties.

(f) The board shall appoint ~~[an executive director,]~~ one person to serve as president and chief executive officer, exempt from chapters 76 and 88 who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed nine per cent of the five per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the ~~[executive director's]~~ president and chief executive officer's duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant ~~[such]~~ other benefits as it deems necessary.

~~[The board may appoint a sports coordinator, exempt from chapters 76, 78, and 88, who shall provide management services for all sporting events supported through the authority.]~~

~~(g) The authority may employ persons not subject to chapters 76 and 78 to perform and execute the functions of the authority.]"~~

SECTION 5. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) ~~[Make]~~ Through its president and chief executive officer, make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter; provided that the authority may enter into contracts and agreements for a period of up to five years, subject to the availability of funds; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its ~~[executive director]~~ president and chief executive officer, represent the authority in communications with the governor and the legislature;
- (7) Through its ~~[executive director]~~ president and chief executive officer, provide for the appointment of officers, agents, a sports coordinator, and employees, subject to the approval of the board, prescribing

- their duties and qualifications, and fixing their salaries, without regard to chapters 76 and 78, if there is no anticipated revenue shortfall in the tourism special fund and funds have been appropriated by the legislature and allotted as provided by law;
- (8) Through its ~~[executive director]~~ president and chief executive officer, purchase supplies, equipment, or furniture;
  - (9) Through its ~~[executive director]~~ president and chief executive officer, allocate the space or spaces that are to be occupied by the authority and appropriate staff;
  - (10) ~~[Engage]~~ Through its president and chief executive officer, engage the services of qualified persons to implement the State's tourism marketing plan or portions thereof as determined by the authority;
  - (11) ~~[Engage]~~ Through its president and chief executive officer, engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
  - (12) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
  - (13) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source, including any revenues or proceeds arising from the operation or use of the convention center;
  - (14) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors;
  - (15) Have a permanent, strong focus on marketing and promotion;
  - (16) Conduct market development-related research as necessary;
  - (17) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
  - (18) Work to eliminate or reduce barriers to travel ~~[in order]~~ to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
  - (19) Market and promote sports-related activities and events;
  - (20) Coordinate the development of new products with the counties and other persons in the public sector and private sector, including the development of sports, culture, health and wellness, education, technology, agriculture, and nature tourism;
  - (21) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
  - (22) Encourage the development of tourism educational, training, and career counseling programs;
  - (23) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary;
  - (24) Develop and implement emergency measures to respond to any adverse effects on the tourism industry, pursuant to section 201B-9;
  - (25) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;



- (26) Notwithstanding chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
- (27) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center facility."

SECTION 6. Section 201B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In accordance with subsection (a), the authority shall ~~[be responsible for developing]~~ develop measures of effectiveness to assess the overall benefits and effectiveness of the marketing plan and include documentation of the directly attributable benefits of the plan to the following:

- (1) Hawaii's tourism industry;
- (2) Employment in Hawaii;
- (3) State taxes; and
- (4) The State's lesser known and ~~[underutilized]~~ underused destinations."

SECTION 7. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues focused on visitors;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do business, including high technology business, and as a business destination;
- (6) Reduction of barriers to travel;
- ~~[(7)]~~ Marketing, management, use, operation, or maintenance of the convention center facility, including the purchase or sale of goods or services, logo items, concessions, sponsorships, and license agreements, or any use of the convention center facility as a commercial enterprise; provided that effective January 1, 2003, and thereafter, the contract for management of the convention center facility shall include marketing for all uses of the facility; ~~[and]~~
- ~~[(8)]~~ Tourism research and statistics to:
  - ~~(A)~~ Measure and analyze tourism trends;
  - ~~(B)~~ Provide information and research to assist in the development and implementation of state tourism policy;
  - ~~(C)~~ Provide tourism information on:
    - ~~(i)~~ Visitor arrivals, visitor characteristics, and expenditures;
    - ~~(ii)~~ The number of transient accommodation units available, occupancy rates, and room rates;
    - ~~(iii)~~ Airline-related data including seat capacity and number of flights;
    - ~~(iv)~~ The economic, social, and physical impacts of tourism on the State; and

- (v) The impact of ongoing marketing programs of the authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underused destinations; and

- (9) Any and all other activities necessary to carry out the intent of this chapter;

provided that for any contract or agreement valued at \$25,000 and over, the authority shall provide notice to the speaker of the house of representatives and the president of the senate on the same day that such notification is given to the governor."

SECTION 8. Section 201B-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§201B-9] Tourism emergency.** (a) If the board determines that the occurrence of a world conflict, terrorist threat, national or global economic crisis, natural disaster, outbreak of disease, or other catastrophic event~~[-regardless of when or where it occurs,]~~ adversely affects Hawaii's tourism industry by resulting in a substantial interruption in the commerce of the State and adversely affecting the welfare of its people, the board shall submit a request to the governor to declare that a tourism emergency exists.

(b) Upon declaration by the governor that a tourism emergency exists pursuant to subsection (a), the authority shall develop and implement measures to respond to the tourism emergency, including providing assistance to tourists during the emergency; provided that any tourism emergency response measure implemented pursuant to this subsection shall not include any provision that would adversely affect the organized labor force in tourism-related industries. With respect to a national or global economic crisis only, in addition to the governor's declaration of the existence of a tourism emergency, no action in response to the tourism emergency declaration may be taken by the authority without the governor's express approval."

SECTION 9. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter; provided that:

- (1) Not more than five per cent of this amount shall be used for administrative expenses, including \$15,000 for a protocol fund to be expended at the discretion of the ~~[executive director;]~~ president and chief executive officer; and
- (2) At least \$1,000,000 shall be made available to support efforts to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors."

SECTION 10. Section 201B-13, Hawaii Revised Statutes, is amended to read as follows:

**"[§201B-13] Assistance by state and county agencies[-]; advisory group.** (a) Any state or county agency may render services upon request of the authority.

(b) The authority may establish an advisory group that may meet monthly or as the authority deems necessary, which may include the director of business, economic development, and tourism, director of transportation, chairperson of the board of land and natural resources, and executive director of the state

foundation on culture and the arts to advise the authority on matters relating to their respective departments or agency in the preparation and execution of suggested:

- (1) Measures to respond to tourism emergencies pursuant to section 201B-9;
- (2) Programs for the management, improvement, and protection of Hawaii's natural environment and other areas frequented by visitors;
- (3) Measures to address issues affecting airlines, air routes, and barriers to travel to Hawaii; and
- (4) Programs to perpetuate the cultures of Hawaii and engage local communities to sustain and preserve the native Hawaiian culture."

SECTION 11. For fiscal year 2010-2011, after the revenues collected under chapter 237D, Hawaii Revised Statutes, are distributed pursuant to section 237D-2(b), Hawaii Revised Statutes, 12.5 per cent of the revenues derived under section 237D-2(b)(2), Hawaii Revised Statutes, shall be deposited into the tourism special fund established under section 201B-11, Hawaii Revised Statutes, and any excess revenues shall be deposited into the general fund.

SECTION 12. Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22, Session Laws of Hawaii 2005, as amended by section 1 of Act 306, Session Laws of Hawaii 2006, is amended by amending section 14 to read as follows:

"SECTION 14. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2006, by section 1 of Act 137, Session Laws of Hawaii 2005;
- (2) Sections 3, 4, 5, 6, and 7 of Part I shall be repealed on June 30, 2010, and [sections 28-8.3];
  - (A) Sections 201B-2[5] and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on May 5, 2004[5] and sections]; except that the amendments made by Act 5, Session Laws of Hawaii 2009, to section 201B-2, Hawaii Revised Statutes, and subsection (c) of section 201B-11, Hawaii Revised Statutes, shall not be repealed; and
  - (B) Sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1986; and
- (3) Section 9 shall take effect on July 1, 2004."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect on July 1, 2009; provided that section 11 shall take effect upon the enactment of S.B. No. 1111, S.D. 1, H.D. 1, C.D. 1,<sup>2</sup> Regular Session of 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Notes

1. Edited pursuant to HRS §23G-16.5.

2. Act 61.

## ACT 6

H.B. NO. 952

A Bill for an Act Relating to Labor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 377, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§377- Streamlining union certification.** (a) When an employee, group of employees, or any individual or labor organization acting on their behalf, files a petition alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for those purposes, the board shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative, and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the board shall certify the individual or labor organization as the representative without directing an election similar to that under section 377-1(11).

(b) The board shall adopt rules governing the certification of an exclusive representative under this section and shall have the final determination on any controversy concerning the eligibility of an employee to sign an authorization card and the validity of an employee's signature on an authorization card.

(c) For the purposes of this section, the term “employee” means an employee as defined in section 377-1; provided that the employee is employed by an employer with an annual gross revenue of more than \$5,000,000.

**§377- Facilitating initial collective bargaining agreements.** (a) No later than ten days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

(b) If, after the expiration of the ninety-day period beginning on the date on which bargaining commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the board of the existence of a dispute and request conciliation under section 377-3.

(c) If, after the expiration of the twenty-day period beginning on the date on which the request for conciliation is made under subsection (b), or such additional period as the parties may agree upon, the conciliator is not able to bring the parties to agreement by conciliation, the board shall refer the dispute to an arbitration panel established in accordance with section 89-11(e)(2)(A) and rules as may be prescribed by the board. The arbitration panel shall render a decision settling the dispute, and the decision shall be binding upon the parties for a period of two years, unless amended during that period by written consent of the parties.”

SECTION 2. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) After the final hearing, the board shall promptly make and file an order or decision, incorporating findings of fact upon all the issues involved in

the controversy and the determination of the rights of the parties. Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders. Final orders may dismiss the complaint or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend the person's rights, immunities, privileges, or remedies granted or afforded by this chapter for not more than one year, and require the person to take ~~[such] affirmative action, including reinstatement of employees [with or without pay, as the board may deem proper.] and make orders in favor of employees making them whole, including back pay with interest, costs, and attorneys' fees.~~ Any order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. Furthermore, an employer or employee who wilfully or repeatedly commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees or discriminates against an employer or employees for the exercise of protected conduct shall be subject to a civil penalty not to exceed \$10,000 for each violation. In determining the amount of any penalty under this section, the board shall consider the gravity of the unfair or prohibited practice and the impact of the practice on the charging party, on other persons seeking to exercise rights guaranteed by this section, or on public interest."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 7

H.B. NO. 982

A Bill for an Act Relating to Family Leave.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that over twenty-five per cent of Hawaii's households have at least one individual providing informal, unpaid care to an adult aged sixty or older with physical or cognitive disabilities. This percentage is expected only to increase. Projections indicate that by the year 2020, more than one in four individuals will be aged sixty or older, and an individual's need for personal care assistance due to physical, sensory, cognitive, and self-care disabilities increases with age.

The legislature finds that the average age of family caregivers is fifty-four years of age, which is well below the age of retirement. Over fifty-five per cent of the family caregivers are employed, and of this group, over twenty-six per cent indicate that their employment is affected by their caregiving responsibilities. Reduction in work hours was an oft cited effect, followed by turning down promotions and taking leaves of absence. Nearly all of the family caregivers surveyed stated that they frequently rearrange their work schedules, and over seventy-seven per cent take time off from work to deal with caregiving responsibilities.

The legislature finds that approximately ten per cent of the Hawaii workforce, or over eighty thousand employees, may currently seek or need to take some form of leave to address family caregiving issues.

The legislature further finds that in seeking to analyze and develop improvements to the family leave system there is inadequate data about the use of and need for family leave.

The purpose of this Act is to create a family leave data collection system to:

- (1) Create a data collection system that is capable of analyzing and reporting family caregiving data for public and private-sector employees;
- (2) Ensure that information about uncovered employees is captured by the data system; and
- (3) Create the basis for development of a data-driven paid family leave system that can complement other caregiver services, especially for elder family members.

SECTION 2. Chapter 398, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§398- Family leave data collection system; establishment.** (a) There is established a family leave data collection system to:

- (1) Ensure that all employees covered by the benefits of this chapter are informed of their rights under this chapter and their names are entered into the data base upon application for benefits;
- (2) Collect pertinent data, consistent with state and federal privacy statutes, on the use and potential demand for family leave benefits for both public and private-sector employees, including information on who and under what circumstances employees are using family leave benefits, the nature and duration of family members' needs, and the adequacy of current family leave benefits;
- (3) Provide analysis of the data to assist in the development and implementation of an efficient system of family leave, including potential paid family leave, for employees in Hawaii; and
- (4) Provide analysis of data to assist in the future development of caregiver services for senior citizens in Hawaii.

(b) The department shall work with the University of Hawaii center on aging to create a web-based data system with the following capabilities:

- (1) The capacity for all employees seeking family leave benefits under this chapter to log into the data system and enter pertinent data on the circumstances and need for family leave benefits;
- (2) The ability to secure confidential information, consistent with state and federal privacy statutes, available only in aggregate form for managers and analysts of the data system;
- (3) The ability of the employee to print out a simple form to be submitted to the employer certifying that required data has been entered;
- (4) The ability of data managers and analysts to manipulate and query the data base to achieve the purpose of this chapter;
- (5) A back-up paper system that can be used when computer access or printing is unavailable; and
- (6) A user-friendly format that can be translated into multiple languages for employees.

(c) The state auditor shall be provided access to the data base and shall prepare annual reports to the legislature, the department, and the University of Hawaii center on aging.”

SECTION 3. Section 392-61, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§392-61]]~~ **Establishment of special fund for disability benefits.** There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a special fund for disability benefits which shall be administered by the director exclusively for the purposes of this chapter; and for the establishment and maintenance of a family leave data collection system under section 398-. All contributions pursuant to this part shall be paid into the fund and all benefits payable under this part shall be paid from the fund. The fund shall consist of (1) all contributions collected pursuant to this part, together with any interest thereon; (2) all fines and penalties for the fund pursuant to this chapter; (3) all moneys collected by way of subrogation; (4) interest earned on any moneys in the fund; (5) any property or securities acquired through the use of moneys belonging to the fund; (6) all earnings of such property and securities; and (7) all other moneys received for the fund from any source.”

SECTION 4. Section 398-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§398-5]]~~ **Notice.** In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable. Requests for family leave shall include evidence that the employee has submitted the request and provided required data in accordance with section 398-.”

SECTION 5. There is appropriated out of the disability benefits special fund established under section 392-61, Hawaii Revised Statutes, the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 for the University of Hawaii center on aging to cover the estimated costs of the:

- (1) Development of a web-based data system as provided by this Act;
- (2) Purchase of hardware, software, servers, and other necessary elements of the system; and
- (3) Costs of personnel required to maintain the system.

The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 8

H.B. NO. 989

A Bill for an Act Relating to Children's Health Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 236, Session Laws of Hawaii 2007, as amended by Act 239, Session Laws of Hawaii 2008, is amended by amending section 3<sup>1</sup> to read:

"SECTION 3. (a) There is established the Hawaii children's health care program as a temporary [~~three-year~~] pilot program to provide health care coverage to uninsured children who live in Hawaii. The department of human services shall provide health care coverage through a public-private partnership, established as a contract to provide health and human services pursuant to chapter 103F, Hawaii Revised Statutes, between the department and one or more managed care plans operating in the state under chapter 432, Hawaii Revised Statutes, that offers accident and health or sickness insurance plans.

(b) It is not the intent of the legislature to discourage employers from offering to pay, or from paying for, dependent coverage for their employees, nor that this Act supplant employer-sponsored dependent coverage plans.

(c) To qualify, a child shall:

- (1) Be at least thirty-one days to less than nineteen years old;
- (2) Be living in Hawaii;
- (3) Have been uninsured continually for at least six months; provided that infants thirty-one days to six months of age shall have been uninsured continually since birth; and
- (4) Have been ineligible during the six months the child was uninsured for any other state or federal health care coverage and be currently ineligible for any other state or federal health care coverage; provided that:

- (A) All children enrolled in a managed care plan's children's plan as of the effective date of this Act shall be eligible for enrollment into the Hawaii children's health care program without being subject to the requirement of being uninsured for the precedent six months in subsection (c)(3);
- (B) Children who are at least thirty-one days but less than nineteen years old who become ineligible for a med-QUEST division health care coverage program due to an increase in family income may enroll in the program upon disenrollment from a med-QUEST division health care coverage program; and
- (C) Uninsured newborn children who are one day, but not more than thirty days of age who were enrolled in the Hawaii infant health care program shall be eligible for enrollment in the Hawaii children's health care program without being subject to the requirement of being uninsured for the precedent six months in subsection (c)(3).

(d) In lieu of paragraphs (c)(3) and (4), a child may also qualify if the child is uninsured due to the loss of the parent's or guardian's health insurance; provided that the child's parent or guardian was employed by a Hawaii employer that was covered by and in compliance with chapter 393, Hawaii Revised Statutes, and that, between February 29, 2008 and September 30, 2008, filed for bankruptcy and ceased doing business in Hawaii or ceased doing business in Hawaii. The eligibility requirements of subsections (c)(1) and (2) shall still apply. Furthermore, coverage received based upon meeting the eligibility requirements of this subsection shall continue only until the earlier of the following:



- (1) The former employee parent or guardian of the covered child becomes employed and covered by a prepaid health care plan; or
- (2) December 31, 2008.
- (e) The department of human services and the managed care plans shall share equally in the cost of the premium for each child enrolled in the program subject to the appropriation of general funds for the program.

(f) Primary health care services for participants in the Hawaii children's health care program shall be provided by a federally qualified health center, as recognized by the United States Centers for Medicare and Medicaid Services. The managed care plan partner shall establish payment plans with the State's federally qualified health centers to cover the costs of the participants' primary health care services.

~~(f)~~ (g) The department of human services shall pay the State's share of the premiums under the program on a quarterly basis.

~~(g)~~ (h) The managed care plans participating in the pilot program shall be responsible for determining the eligibility of program applicants and of enrolling applicants in the pilot program.

~~(h)~~ (i) The managed care plans participating in the program shall provide a quarterly report to the department of human services and the legislature on the number of children enrolled in the program.

~~(i)~~ (j) The department shall ensure that other private organizations have the opportunity to partner with the State to offer coverage to uninsured children under the program; provided that plan benefits to be provided shall be equal to or better than those offered through the program established by the State and managed care plans under subsection (a).

~~(j)~~ (k) The department of human services and any participating managed care plan shall report to the legislature no later than twenty days prior to the start of the ~~[2008]~~ 2010 and ~~[2009]~~ 2011 regular sessions on:

- (1) Any problems experienced with the program involving crowding out eligible participants;
- (2) Instances of people canceling their previous coverage to receive this free coverage;
- (3) The amount of funding used and for what purposes;
- (4) Any other problems encountered in the administration of the program; ~~and~~
- (5) Any proposed legislation~~[-]; and~~
- (6) Any proposals on funding sources other than the State."

SECTION 2. Act 236, Session Laws of Hawaii 2007, is amended by amending section 14 to read:

"SECTION 14. This Act shall take effect ~~[upon]~~ on July 1, 2007; provided that on June 30, 2010, with the exception of section 3, this Act shall be repealed and section 346-59.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act~~[-]; and provided further that on June 30, 2012, section 3 of this Act shall be repealed.~~"

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 for the Hawaii children's health care program established under section 3 of Act 236, Session Laws of Hawaii 2007 as amended by Act 239, Session Laws of Hawaii 2008.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. See also section 4 of Act 239, Session Laws of Hawaii 2008.

**ACT 9**

H.B. NO. 1471

A Bill for an Act Relating to Farms.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that food safety certification is a critical component of food distribution. Hotels, restaurants, and others in the tourism industry often seek to buy as much local produce as they can, and the demand for food safety certification has increased and is required by visitor industry restaurants. This requirement has limited the procurement of locally grown produce.

The purpose of this Act is to expand the access of the visitor and hospitality industry to local produce by establishing a safe food certification pilot program to benefit farmers statewide.

SECTION 2. (a) There is established in the department of agriculture a safe food certification pilot program to benefit farmers throughout the state.

(b) The pilot program shall be managed by the department of agriculture; provided that the department of health shall provide the department of agriculture with assistance as necessary in implementing the pilot program. The pilot program shall:

- (1) Encourage farmers to form agricultural cooperatives;
- (2) Coordinate purchasing agreements between the agricultural cooperatives and hotels, restaurants, and other buyers in the visitor and hospitality industries; and
- (3) Develop and implement "safe" food certification for products under the pilot program to promote fresh, high-quality, locally-grown produce grown by Hawaii farmers.

All farmers operating in the state shall be eligible to apply for the pilot program.

SECTION 3. There is appropriated out of the tourism special fund the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2009-2010 and such sum shall be transferred to the department of agriculture to establish and administer the safe food certification pilot program established in this Act.

SECTION 4. There is appropriated from the interdepartmental appropriation transferred from the Hawaii tourism authority the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2009-2010 for the department of agriculture to establish and administer the safe food certification pilot program established in this Act.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2010.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 10

H.B. NO. 1479

A Bill for an Act Relating to Labor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 104-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every ~~[such]~~ contract subject to this chapter and the specifications for ~~[such contract]~~ those contracts shall contain a provision that a certified copy of all payrolls and a certified copy of a fringe benefit reporting form supplied by the department or any certified form that contains all of the required fringe benefit information shall be submitted weekly to the governmental contracting agency for review. The fringe benefit reporting form shall itemize the cost of fringe benefits paid by the general contractor or subcontractor for:

- (1) Health and welfare benefits;
- (2) Pension and annuity benefits;
- (3) Vacation benefits;
- (4) Continuing education and training benefits; and
- (5) Other fringe benefit costs paid by the general contractor or subcontractor.

The general contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the director of labor and industrial relations attached to the contract, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the contracting agency shall be reported to the general contractor and the director to effect compliance.

(b) Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the general contractor and the general contractor's subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, the itemized fringe benefit reporting form pursuant to subsection (a), daily and weekly number of hours worked, deductions made, and actual wages paid.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on October 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 11

H.B. NO. 1504

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The cost of health care in Hawaii and the nation is escalating exponentially, and medicaid reimbursements are frequently less than the actual cost of care. Additionally, health insurance premium costs and prescription drug costs are rising rapidly.

In recent years, some of the largest hospitals in the state reported that consumers and employers will likely pay more for labor costs due to increased hospital fees and higher insurance premiums, yet receive fewer services in return.

The increase in premium costs translates into increased costs for employers. Under the state's Prepaid Health Care Act, private-sector employers are required to pay the bulk of health insurance premiums for their regular employees who work twenty hours or more per week. Because the Act does not require employers to provide health insurance coverage for employees working fewer than twenty hours a week, increased health insurance costs may lead to employers hiring individuals to work fewer than twenty hours per week to avoid higher costs.

Increased health care costs can also be traced to the demand for access to the newest technology for treatment of illnesses. It is estimated that new technology is responsible for almost fifty per cent of the total increase in health care over the last thirty years. While greatly improving the quality of life for patients, the costs involved in providing these services place a heavy burden on the State's already struggling health care system.

Health agencies are also concerned about the growing number of uninsured individuals in the state. Hawaii was once known for its low number of uninsured people, between two and five per cent in 1994. The Healthcare Association of Hawaii estimates that the current rate of uninsured individuals is more than ten per cent of the state's population.

While the Prepaid Health Care Act has served its purpose well for many years, it is now time to consider other options to address these increased health care costs. There is a need for new and innovative legislation that will provide affordable health care for all of Hawaii's residents.

The legislature recognizes the accomplishments of Ah Quon McElrath (1915-2008) toward improving the welfare of the people of the state. As a life-long champion of the underdog and an eloquent, irrepressible, and forceful spokesperson for labor, human rights, and progressive causes, McElrath never hesitated to challenge the establishment to promote standard-of-living improvements for working men and women in areas such as occupational safety, ethnic equality, health care, and education. It was her dream for everyone in our state and nation to have access to affordable health care. Accordingly, the legislature dedicates this Act to Ah Quon McElrath.

The purpose of this Act is to initiate the comprehensive reformation of Hawaii's health care system with the ultimate goal of facilitating universal coverage through the provision of affordable, high-quality medical services for Hawaii's residents by establishing the Hawaii health authority to develop a comprehensive plan to provide universal health care in Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HAWAII HEALTH AUTHORITY**

**§ -1 Hawaii health authority; establishment.** (a) There is established within the department of budget and finance for administrative purposes the Hawaii health authority. The authority shall be an autonomous public body corporate and politic and an instrumentality of the State.

(b) The authority shall be composed of nine members appointed by the governor as provided in section 26-34; provided that three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives and three members shall be appointed from a list of nominees submitted by the president of the senate. All members shall be appointed for terms of four years each.

(c) One member shall be selected to be the executive director and confirmed by a majority vote of a quorum of the members of the Hawaii health authority.

(d) Each member shall hold office until the member's successor is appointed and qualified.

(e) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all valid actions by the authority.

**§ -2 Hawaii health authority; duties and responsibilities.** (a) The authority shall be responsible for overall health planning for the state and shall be responsible for determining future capacity needs for health providers, facilities, equipment, and support services providers.

(b) The authority shall develop a comprehensive health plan that includes:

- (1) Establishment of eligibility for inclusion in a health plan for all individuals;
- (2) Determination of all reimbursable services to be paid by the authority;
- (3) Determination of all approved providers of services in a health plan for all individuals;
- (4) Evaluation of health care and cost effectiveness of all aspects of a health plan for all individuals; and
- (5) Establishment of a budget for a health plan for all individuals in the state.

(c) The authority shall determine the waivers that are necessary and available by federal law, rule, or regulation necessary to implement and maintain this chapter.

(d) The authority shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

(e) The authority shall submit a comprehensive health plan for all individuals in the state, including its findings and recommendations, to the legislature no later than twenty days prior to the convening of the regular session of 2011.”

**SECTION 3.** There is appropriated out of the state health planning and development special fund of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2009-2010 for the purpose of operating the Hawaii health authority.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

**SECTION 4.** This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 12

H.B. NO. 1525

A Bill for an Act Relating to Medicaid.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Recently, the state department of human services contracted for the administration of a new managed care program, QUEST Expanded Access, for the aged, blind, and disabled population. Of the awarded contracts, two went to for-profit insurance companies to provide medicaid coverage for Hawaii's thirty-seven thousand aged, blind, and disabled residents. Several states have found a number of serious violations of law and instances of medicaid fraud in administering similar medicaid programs through for-profit insurance companies. Medicaid fraud squanders limited funds, threatens safety, and cheats American taxpayers, which inhibits government efforts to obtain needed health-care and services for aged, blind, and disabled residents. As a result, legislation has been proposed throughout the United States that permits only nonprofit and government-related entities to bid on medicaid contracts.

The department of human services has determined that the State may contract with for-profit entities to provide medicaid health insurance plans under the QUEST Expanded Access program. However, it is important to the taxpayers of the State of Hawaii that state laws and rules give state agencies latitude to determine the reasonableness of administrative spending for for-profit health insurance plans. It is also important to the taxpayers that for-profit corporations providing health insurance for Hawaii's medicaid clients understand Hawaii's cultural history of caring for those who are less fortunate.

For-profit entities that are willing to do business in the State of Hawaii with the cultural understanding and compassion that Hawaii as the "Health State" has fostered, should be willing to disclose all financial activities of its Hawaii subsidiaries and its national corporate entities as a gesture of good faith and local corporate integrity.

The purpose of this Act is to require all future Medicaid health insurance procurement contracts to be awarded only to qualified nonprofit and for-profit entities that comply with specified reporting requirements.

SECTION 2. Chapter 103F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§103F- Medicaid contracts; nonprofits and for-profits; reporting requirements.** (a) All nonprofit or for-profit medicaid healthcare insurance contractors, within one hundred and eighty days following the close of each fiscal year, shall submit an annual report to the department of human services, the insurance division of the department of commerce and consumer affairs, and the legislature. The report shall be attested to by a plan executive located within the state and shall be made accessible to the public.

The report shall be based on contracts administered in the state and shall include:

- (1) An accounting of expenditures of MedQuest contract payments for the contracted services, including the percentage of payments:
  - (A) For medical services;
  - (B) For administrative costs;
  - (C) Held in reserve; and
  - (D) Paid to shareholders;
- (2) Employment information including:

- (A) Total number of full-time employees hired for the contracted services;
  - (B) Total number of employees located in the state and the category of work performed; and
  - (C) The compensation provided to each of the five highest paid Hawaii employees and to each of the five highest paid employees nationwide, and a description of each position;
- (3) Descriptions of any on-going state or federal sanction proceedings, prohibitions, restrictions, on-going civil or criminal investigations, and descriptions of past sanctions or resolved civil or criminal cases, within the past five years and related to the provision of medicare or medicaid services by the contracting entity, to the extent allowed by law;
- (4) Descriptions of contributions to the community, including the percentage of revenue devoted to Hawaii community development projects and health enhancements; provided that contracted services shall not be included in the percentage calculation; and
- (5) A list of any management and administrative service contracts for MedQuest services made in Hawaii and outside of the state, including a description of the purpose and cost of those contracts.
- (b) The department of human services shall include in all medicaid healthcare insurance plan contracts, the annual reporting requirements of subsection (a).
- (c) Any contract under this section shall be governed by the laws of the State of Hawaii.
- (d) Within ninety days of receipt of the reports required by this section, the department of human services shall provide a written analysis and comparative report to the legislature."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 13

H.B. NO. 1538

A Bill for an Act Relating to Environmentally-Sensitive Products.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- Environmentally-sensitive cleaning and maintenance products for use in public schools.** The department of education shall require that all public

school facilities give first preference, where feasible, to the purchase and use of environmentally-sensitive cleaning and maintenance products that have been approved by the Green Seal program pursuant to section 321- , for use in public school facilities:

- (1) To clean hard surfaces in bathrooms such as counters, walls, floors, fixtures, basins, tubs, or tile;
- (2) To eliminate dirt and stains on rugs and carpeting;
- (3) For routine cleaning of hard surfaces, including impervious flooring such as concrete or tile; provided that this category shall not include:
  - (A) Products intended primarily to strip, polish, or wax floors; or
  - (B) Cleaners intended primarily for cleaning toilet bowls, dishes, laundry, upholstery, or wood;
- (4) To clean glass, windows, mirrors, or metallic or polished surfaces;
- (5) For routine, non-specialized hand cleaning;
- (6) Paper towels or other paper used for cleaning; provided that this category shall not include toilet paper, facial tissue, or paper towels used for drying hands; and
- (7) Other categories as identified in the department of health."

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§321- Environmentally-sensitive cleaning and maintenance products for use in public schools; approved list of products.** (a) The department of health shall maintain a list of products that have been approved by the Green Seal program for public school facilities to use as a first preference guideline when purchasing and using environmentally-sensitive cleaning and maintenance products; provided that the department may add or remove any product from the list as deemed necessary by the director.

(b) The department shall review and evaluate existing research regarding environmentally-sensitive cleaning and maintenance products, including any research and guidance issued by the United States Environmental Protection Agency."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 14

H.B. NO. 1544

A Bill for an Act Relating to Tax Exemptions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-54, Hawaii Revised Statutes, is amended to read as follows:



**“§235-54 Exemptions.** (a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code[;] of 1986, as amended, and except as provided in subsection (c), personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by \$1,040, for taxable years beginning after December 31, 1984. A nonresident shall prorate the personal exemptions on account of income from sources outside the [State] state as provided in section 235-5. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero.

(b) In computing the taxable income of an estate or trust there shall be allowed, in lieu of the deductions allowed under subsection (a), the following:

- (1) An estate shall be allowed a deduction of \$400.
- (2) A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$200.
- (3) All other trusts shall be allowed a deduction of \$80.

(c) The phaseout under Section 151(d)(3) of the Internal Revenue Code of 1986, as amended, shall apply to this section; provided that the threshold income amounts under Section 151(d)(3)(C) of the Internal Revenue Code of 1986, as amended, shall be reduced by twenty-five per cent for the purposes of this subsection; provided further that the threshold income amounts under Section 151(d)(3)(C) of the Internal Revenue Code of 1986, as amended, used to determine the twenty-five per cent reduction under this subsection shall be maintained at the amounts in place on July 1, 2008.

[(e)] (d) A blind person, a deaf person, and any person totally disabled, in lieu of the personal exemptions allowed by the Internal Revenue Code, shall be allowed, and there shall be deducted in computing the taxable income of a blind person, a deaf person, or a totally disabled person, instead of the exemptions provided by subsection (a), the amount of \$7,000.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval, and shall apply to taxable years beginning after December 31, 2008; provided that this Act shall be repealed on June 30, 2015, and section 235-54, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 15

H.B. NO. 1552

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that state living parks possess unique historical and cultural value. In state living parks, individuals reside on lands located within the living park and are an essential part of the purpose of the park for the benefit of the public. As set forth in Senate Resolution No. 264, S.D. 1, Regular Session of 1977, the purpose of a living park is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways.

Kahana valley state park is an example of a living park. Between 1965 and 1969, the State condemned the ahupuaa o Kahana for use as a state park, making it the only landowner in the State of Hawaii, other than the owners of Niihau, to own an intact ahupuaa. An ahupuaa, a triangular slice of land running from the mountains to the ocean, was the major land division used by pre-contact Hawaiians.

Families living in Kahana at the time of condemnation were of varied ethnic backgrounds, and the people of Kahana generally lived a simple, subsistence lifestyle in harmony with native Hawaiian values and traditions. In 1970, a governor's task force proposed the concept of a living park as a way in which the residents could continue to live in the park and participate in the park for the benefit of the public.

To effectuate the living park concept, Act 5, Session Laws of Hawaii 1987, authorized the department of land and natural resources to issue long-term residential leases to individuals who had been living on the land. In 1993, the department of land and natural resources entered into sixty-five-year leases with thirty-one qualifying families and required that all lessees be an essential part of the interpretive programs by contributing at least twenty-five hours of service each month to benefit the park. To provide lessees with money to construct new houses, Act 238, Session Laws of Hawaii 1988, appropriated funds to provide low-interest home construction and mortgage loans for Kahana valley state park lessees. The appropriation was sufficient for twenty-six lessees to receive loans in the amount of \$50,000 each.

Since 1993, three leases have been terminated by the department of land and natural resources for noncompliance with lease conditions. Other families living in Kahana valley have sought to obtain long-term leases, but the department of land and natural resources refuses to issue any further leases, relying on the attorney general's opinion issued on March 24, 2008, asserting that Act 5, Session Laws of Hawaii 1987, expired.

Since 1970, Kahana residents and the greater community proposed numerous plans to the board of land and natural resources. However, the board of land and natural resources never adopted a master plan for Kahana valley state park. As a result, there has been a lack of clarity, vision, goals, and policies directing the residents and the department of land and natural resources in the development and management of Kahana valley state park.

The management of a living park requires that the department of land and natural resources have the authority to negotiate and enter into long-term residential leases, a clear master plan, and the resources to support the living park, including the establishment of a land manager position akin to a konohiki.

The purpose of this Act is to:

- (1) Establish a two-year moratorium on evictions of persons who at the time of the enactment of this Act, reside in Kahana valley state

- park, have participated in interpretive programs for Kahana valley state park, and have continuously lived there since before 1987 or hold or have held a long-term lease or permit to reside there;
- (2) Authorize the department of land and natural resources to issue long-term residential leases to qualified persons; and
  - (3) Establish a living park planning council to develop a master plan for each state living park that will provide the framework, proposed rules, measurements for success, and planning process to ensure that the living park achieves its purpose and goals.

SECTION 2. As used in this Act, "living park" means a state park where individuals residing on lands located within the state park are an essential part of the purpose of the park, for the benefit of the public.

SECTION 3. (a) Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, there is established a two-year moratorium from the effective date of this Act on the eviction of persons who at the time of the enactment of this Act:

- (1) Reside in Kahana valley state park;
- (2) Have participated in interpretive programs for Kahana valley state park; and
- (3) Have:
  - (A) Continuously lived there since before 1987; or
  - (B) Held a long-term lease or permit to reside there.

(b) Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into long-term residential leases for sites in state parks with acreage greater than five thousand acres but not more than six thousand acres, with the following qualified persons:

- (1) Persons who at the time of enactment of this Act reside in a state living park and are contributing at least twenty-five hours of service each month to benefit the state living park; and
- (2) Other qualified persons who may be identified in a living park master plan approved by the board of land and natural resources.

SECTION 4. (a) For each state living park there shall be established a living park planning council to be placed within the department of land and natural resources for administrative purposes. The planning council shall consist of five voting members, appointed in the manner and to serve for the terms provided in section 26-34, Hawaii Revised Statutes, and two ex officio nonvoting members.

(b) The voting members of the living park planning council shall be as follows:

- (1) One member shall be a representative of the department of land and natural resources;
- (2) Three members shall be representatives of families who reside in the state living park, selected from a list of resident nominees provided by the president of the park's community association; and
- (3) One member shall be a representative of the general public.

(c) The ex officio nonvoting members of the planning council shall be appointed in equal numbers by the state senator and the state representative representing the district in which the state living park is located. Each nonvoting member of the planning council shall possess general knowledge of at least one of the four strategic areas listed below:

- (1) Land use laws or land use planning;
- (2) Community-based planning;
- (3) The environment; or
- (4) Native Hawaiian culture.
- (d) The council shall select a chairperson by a majority vote of its voting members; provided that no member may serve as chairperson for more than three consecutive years.
- (e) Council members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their official duties.
- (f) Any action taken by the planning council shall be approved by a majority of its voting members. Three voting members shall constitute a quorum to conduct business.
- (g) The first meeting shall be held on the third Tuesday in July, beginning in 2009.

SECTION 5. The development of a master plan for a state living park shall rest with the living park planning council. The master plan shall be reviewed and updated as needed. In developing the master plan, the council, among other things, shall:

- (1) Establish goals and objectives to ensure the living park reaches its full potential;
- (2) Set forth standards, timelines, and other measurements to ensure the living park achieves its goals and objectives;
- (3) Identify programs that enhance educational opportunities and cultural awareness in the living park;
- (4) Develop plans to secure funding for a land manager, a housing fund, and any other financial needs identified in the living park master plan;
- (5) Seek out and consult with all residents of the living park, kupuna, community groups adjacent to the living park, and organizations that have knowledge that may benefit the living park;
- (6) Advise the department of land and natural resources on any matter relating to the living park;
- (7) Propose agreements that will establish the full authority of the planning council to implement the master plan, including whether the planning council can hire a land manager, establish a nonprofit organization, or enter into contracts;
- (8) Establish criteria, policies, and controls governing the management of the living park leases, including:
  - (A) Selection of persons for leases; provided that preference is given to persons residing in the park who contribute twenty-five hours of service each month to benefit the living park and are actively seeking a lease in the living park;
  - (B) Designation of lands to be leased;
  - (C) Terms and conditions of leases;
  - (D) Monitoring and enforcement of lease terms and conditions;
  - (E) Treatment of persons residing in a living park without a lease; and
  - (F) Assignment and renewal of leases;
- (9) Maintain, promote, and perpetuate the aloha spirit as defined in section 5-7.5, Hawaii Revised Statutes; and
- (10) Develop protocols and proposals to encourage the caring for kupuna and the sharing and perpetuation of kupuna knowledge.

SECTION 6. The living park planning council shall submit a proposed master plan to the board of land and natural resources no later than one year following the first meeting of the planning council. Within ninety days after submission of the proposed master plan, the board of land and natural resources shall either adopt the proposed master plan or deny the proposed master plan. If it denies the proposed master plan, the board of land and natural resources shall submit to the living park planning council, in writing, its reasons for denying the proposed master plan. The living park planning council shall revise the proposed master plan and resubmit the revised proposed master plan to the board of land and natural resources until a final master plan is adopted.

The living park master plan shall become effective upon its adoption by the board of land and natural resources. Pending adoption of the living park master plan, the department of land and natural resources and the residents of the living park shall be guided by existing plans developed by the residents of the living park. For example, in Kahana valley, the Kahana state park development plan, dated December 1985, and the living park plan of Kahana's people, dated 1979, shall be guiding documents for Kahana valley state park.

SECTION 7. Until the living park master plan is adopted pursuant to this Act and a long-term residential lease application has been acted upon, persons currently residing in a living park at the time of enactment of this Act shall not be evicted on the grounds that they lack a valid lease; provided that they are contributing at least twenty-five hours of service each month to benefit the living park.

SECTION 8. The department of land and natural resources shall submit to the legislature an initial progress report, including any proposed legislation, regarding the implementation of this Act not later than twenty days prior to the convening of the regular session of 2010 and a final progress report, including any proposed legislation, not later than twenty days prior to the convening of the regular session of 2011.

SECTION 9. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 16

H.B. NO. 1676

A Bill for an Act Relating to Public Works.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 104-2, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) When [the]:

- (1) The department of budget and finance enters a project agreement with a project party, as those terms are defined in chapter 39A, to finance or refinance a project with the proceeds of special purpose revenue bonds[, and such];
- (2) The project party has entered into a collective bargaining agreement with a bona fide labor union governing the project party's workforce[;]; and
- (3) The collective bargaining agreement has been properly submitted to the director under section 104-34.

the terms of ~~[that]~~ the collective bargaining agreement and associated provisions shall be deemed the prevailing wages and terms serving as the basis of compliance with this ~~[section]~~ chapter for work on the project by the project party's workforce~~[-]; provided[-, however,]~~ that this subsection does not affect the director's enforcement powers contained in subsection (g)."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 17

S.B. NO. 19

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§103- Public works construction; apprenticeship agreement.** (a) A governmental body, as defined in section 103D-104, that enters into a public works contract under this chapter having an estimated value of not less than \$250,000, shall decrease the bid amount of a bidder by five per cent if the bidder is a party to an apprenticeship agreement registered with the department of labor and industrial relations for each apprenticeable trade the bidder will employ to construct the public works, and in conformance with chapter 372. The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

(b) For purposes of subsection (a), in determining whether there is conformance with chapter 372, the procurement officer shall consider the actual number of apprentices enrolled in and the annual number of graduates of the apprenticeship program.

(c) At the time of submission of a competitive sealed bid or a competitive sealed proposal by a bidder, the bidder shall furnish written proof of being a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works and, if awarded the contract, shall continue to certify monthly in writing that the bidder is a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works for the entire duration of the bidder's work on the project. This subsection shall be deemed to be incorporated into a public works contract. A bidder who is awarded a contract shall be subject to the following sanctions if, after commencement of work, the bidder at any time during the construction is no longer a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works:

- (1) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the bidder; provided that the governmental body shall be entitled to restitution for nonperformance or liquidated damages, as appropriate; or
- (2) Proceedings to debar or suspend under section 103D-702.
- (d) For purposes of this section, "bidder" means an entity that submits a competitive sealed bid under section 103D-302 or submits a competitive sealed proposal under section 103D-303."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 18**

**S.B. NO. 43**

**A Bill for an Act Relating to Physician Workforce Assessment.**

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the state's population growth and rapidly aging population will significantly increase the demand for physician services. Hawaii's physician workforce is also aging. Federal statistics show that over a third of the State's physicians are fifty-five years of age or older and can be expected to leave the workforce at a time when demand is escalating. Furthermore, physician shortages will likely reduce access to care, particularly for neighbor island residents, the elderly, and the indigent statewide. Physician workforce shortages will also significantly raise the already high cost of medical care. In 2006, the federal government projected an across-the-board national physician shortage by the year 2020. Medical specialties whose physicians serve a large proportion of the elderly, such as ophthalmology and cardiology, may experience shortages ranging from thirty to fifty per cent. Many states have published internal studies that similarly forecast physician shortages.

The legislature finds it prudent to assess Hawaii's physician workforce on a continual basis. On-going assessments based on reliable physician workforce data will support proactive measures to prevent or ameliorate the impact of physician shortages in Hawaii.

The purpose of this Act is to implement statewide physician workforce assessment and planning.

SECTION 2. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§304A- John A. Burns school of medicine special fund.** (a) There is established the John A. Burns school of medicine special fund, to be administered and expended by the University of Hawaii.

(b) The following shall be deposited into the special fund:

- (1) Appropriations by the legislature;

- (2) Physician workforce assessment fees established pursuant to section 453-;
- (3) Grants, donations, gifts, or other income received for the purposes of the special fund; and
- (4) Interest earned or accrued on moneys in the special fund.

(c) Moneys in the special fund shall be used to support the John A. Burns school of medicine's activities related to physician workforce assessment and planning within Hawaii; provided that expenditures from the special fund shall be limited to no more than \$150,000 annually. This shall include but not be limited to maintaining accurate physician workforce assessment information and providing or updating personal and professional information, that shall be maintained in a secure database. The John A. Burns school of medicine may disclose information specific to any physician only with the express written consent of that physician."

SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§453- Physician workforce assessment fee; license; physician workforce information.** When a license is renewed, each physician or surgeon and each osteopathic physician or surgeon shall be assessed a fee of \$60 that shall be transferred and deposited into the John A. Burns school of medicine special fund established under section 304A- to support ongoing assessment and planning of the physician workforce in Hawaii. Payment of the physician workforce assessment fee shall be required for license renewal."

SECTION 4. The director of commerce and consumer affairs shall disburse on a quarterly basis from the compliance resolution fund, established pursuant to section 26-9(o), Hawaii Revised Statutes, to the credit of the John A. Burns school of medicine special fund established pursuant to section 304A- , Hawaii Revised Statutes, all moneys collected from the fee assessed pursuant to section 453- , Hawaii Revised Statutes.

SECTION 5. The John A. Burns school of medicine shall submit a report of findings and recommendations detailing its assessment of the physician workforce to the legislature, the state health planning and development agency, and the Hawaii medical board no later than twenty days prior to the convening of the regular session of 2011 and each odd-numbered year thereafter. The report to the Hawaii medical board shall also include information on the expenditure of fees collected pursuant to section 453- , Hawaii Revised Statutes, to produce a physician workforce plan for Hawaii.

SECTION 6. There is appropriated out of the compliance resolution fund the sum of \$5,000 or so much thereof as may be necessary for fiscal year 2009-2010 to be deposited into the John A. Burns school of medicine special fund established pursuant to section 304A- , Hawaii Revised Statutes.

The sum shall be reimbursed from the John A. Burns school of medicine special fund to the compliance resolution fund by July 1, 2010.

SECTION 7. There is appropriated out of the John A. Burns school of medicine special fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 for expenditure as authorized under section 304A- (c), Hawaii Revised Statutes.



The sums appropriated shall be expended by the John A. Burns school of medicine for the purposes of this Act.

SECTION 8. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2009; provided that sections 3 and 4 shall be repealed on June 30, 2012.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 19

S.B. NO. 50

A Bill for an Act Relating to Renewable Energy Producers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§171- Renewable energy producers; lease of public lands without public auction.** (a) The board may lease or renew a lease of public lands to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process; provided that nothing in this section shall be construed to prevent the board from conducting direct negotiations; provided further that the renewable energy producer shall be required to submit as part of the proposal for the board’s evaluation, as assisted by the department of business, economic development, and tourism, the following:

- (1) A timeline for completion of the project;
- (2) A description of a financial plan for project financing;
- (3) A description of the conceptual design of the project;
- (4) A description of the business concept for the project; and
- (5) A description of landscape and acreage requirements including public and private lands.

Upon completion of the board’s evaluation and determination to award or not award a lease to a renewable energy producer, the board shall prepare a report outlining the reasons for the decision.

(b) A lease to a renewable energy producer under this section shall not result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease.

(c) To inform the public prior to the lease of public land or the renewal of a lease of public land for a proposed renewable energy project under this section, the department of land and natural resources shall conduct not less than two public hearings on the island where the public land to be leased for the proposed renewable energy project is located; provided that the notice of the hearing shall be published as provided in section 1-28.5. The board shall prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing.

(d) Any action taken by the board upon a proposal subject to this section shall take place on the island where the public land to be leased for the proposed renewable energy project is located.

(e) For any lease issued pursuant to this section, the renewable energy producer shall have the right of first refusal upon renewal of the lease.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 20**

S.B. NO. 266

A Bill for an Act Relating to Global Warming.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of Hawaii. The potential adverse effects of climate change include a rise in sea levels, resulting in the displacement of businesses and residences and the inundation of Hawaii's freshwater aquifers, damage to marine ecosystems and the natural environment, extended drought and loss of soil moisture, an increase in the spread of infectious diseases, and an increase in the severity of storms and extreme weather events.

On February 2, 2007, the Intergovernmental Panel on Climate Change, a body established by the United Nations, released its fourth assessment of the predicted impacts of global climate change. The panel predicted temperature rises of up to eleven-and-a-half degrees Fahrenheit by 2100 and a sea level rise of up to twenty-three inches, with an additional 7.8 inches possible if current melting of the ice sheets in Greenland and Antarctica continues.

Climate change will have detrimental effects on some of Hawaii's largest industries, including tourism, agriculture, recreational, commercial fishing, and forestry as well as Hawaii's fragile and unique natural resources. Accordingly, the State needs to be prepared to understand and respond to the effects of climate change. While the legislature has taken actions to address the reduction of greenhouse gas emissions through the passage of Act 234, Session Laws of Hawaii 2007, strategies to focus on adaptation need to be investigated and implemented.

SECTION 2. Climate change task force; objectives; membership. (a) The climate change task force is established within the office of planning, for administrative purposes only. The task force shall have the following objectives:

- (1) Scoping the current and potential impacts of global warming and climate change on the people, natural resources, and the economy of the State, including impacts on:
  - (A) The visitor industry;
  - (B) Intrastate and interstate air and sea transportation of cargo and persons;

- (C) Existing buildings and the public utilities infrastructure;
- (D) The health of the people of the State; and
- (E) Native plants, animals, and ecosystems;
- (2) Scoping the potential impacts of rising ocean levels as a result of climate change on the people, natural resources, and the economy of the State, including impacts on:
  - (A) The visitor industry;
  - (B) Shoreline erosion;
  - (C) Intrastate and interstate air and sea transportation of cargo and persons;
  - (D) Existing buildings and the public utilities infrastructure;
  - (E) The health of the people of the State; and
  - (F) Native plants, animals, and ecosystems;
- (3) Estimate the costs to the State of the adverse effects associated with climate change and rising sea levels; and
- (4) Make recommendations to the legislature and the governor on measures that would address or mitigate the near- and long-term effects of climate change. Such measures may include:
  - (A) Protecting against shoreline erosion;
  - (B) Maintaining the visitor industry;
  - (C) Relocating or armoring the transportation infrastructure, such as airports, highways, and ports;
  - (D) Implementing restrictions on construction in areas at risk for sea level rise and inundation;
  - (E) Improving or hardening the public utilities infrastructure, including communication lines, power generation systems, water supply systems, and wastewater treatment and disposal systems;
  - (F) Preparing for health emergencies and impacts to established emergency management systems; and
  - (G) Preserving the health, biodiversity, and resilience of terrestrial, freshwater, and marine ecosystems.
- (b) The climate change task force shall comprise the following:
  - (1) The director of the office of planning or the director's designee, who shall act as chairperson;
  - (2) The deputy director of the department of health's environmental health administration or the deputy director's designee;
  - (3) The director of transportation or the director's designee;
  - (4) The chairperson of the board of land and natural resources, or the chairperson's designee;
  - (5) The vice-director of civil defense of the department of defense or the vice-director's designee;
  - (6) One member appointed by each of the mayors of Hawaii, Honolulu, Kauai, and Maui counties;
  - (7) Three members appointed by the president of the senate, of whom one shall be from an environmental organization;
  - (8) Three members appointed by the speaker of the house of representatives, of whom one shall be from an environmental organization;
  - (9) The director of the Center for Island Climate Adaptation and Policy at the University of Hawaii at Manoa; and
  - (10) One member from the Joint Institute for Marine and Atmospheric Research to be appointed by its administrative board.

Members of the task force shall be exempt from section 26-34, Hawaii Revised Statutes, and serve without compensation, but shall be reimbursed

for expenses necessary for the performance of their duties, including travel expenses.

- (c) The task force shall:
- (1) Submit a preliminary report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2010; and
- (2) Submit a final report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2011.
- (d) The office of planning shall provide administrative and clerical support required by the task force.
- (e) The task force shall cease to exist on June 30, 2011.

SECTION 3. There is appropriated out of the tourism special fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the same sum or so much thereof as may be necessary for fiscal year 2010-2011 for the purposes of this Act.

The sums appropriated shall be expended by the office of planning for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 21

S.B. NO. 415

A Bill for an Act Relating to Home Care Agencies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The health care environment is dynamic, with changes occurring constantly due to new products and services and changing demands of the market. The public must be assured of quality in the care that is offered by providers. Standards of quality for the growing home care industry must also be ensured.

Home care is a component of the health care continuum that is quickly expanding. The expansion is largely due to the rising demand by disabled elderly individuals for care in their homes when possible, rather than in institutional settings. In addition, many other non-elderly individuals with illnesses, injuries, and disabilities also prefer to receive care in the privacy of their own homes.

Since different types of home care clients have a variety of needs, home care agencies provide a broad range of services, both professional and nonprofessional including private-duty nursing services, rehabilitation therapy services, social services, personal care services, and companion services. Home care is usually purchased directly by clients or their families with personal funds since it is not a routine benefit of health insurance plans.

Because a home care worker is often the only other person in the home of a client, who may be mentally or physically disabled, it is essential to ensure that home care workers are adequately trained and ethically responsible. However, home care agencies in Hawaii are not currently required to meet standards of quality and responsibility.

The legislature finds it is necessary to license home care agencies to ensure the public that minimum standards are being met. For example, licensure should

require criminal background checks of home care staff that work in the homes of clients to provide personal care services.

The purpose of this Act is to protect consumers of home care services by requiring home care agencies to be licensed by the department of health.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Home care agencies; licensing.** (a) Beginning July 1, 2010, each home care agency shall be licensed by the department of health to ensure the health, safety, and welfare of clients.

(b) The department of health shall adopt rules in accordance with chapter 91 to:

(1) Protect the health, safety, and civil rights of clients of home care agencies; and

(2) Provide for the licensure of home care agencies.

(c) A service provider agency under contract for services with the city and county of Honolulu elderly affairs division shall be exempt from the licensing requirement of this section.

(d) For purposes of this section:

“Home care agency” means a public or proprietary agency, a private, non-profit organization, or a subdivision of an agency or organization, engaged in providing home care services to clients in the client’s residence. The term “home care agency” does not apply to an individual, including an individual who is incorporated as a business, or is an unpaid or stipended volunteer.

“Home care services” include but are not limited to:

(1) Personal care, including assistance with dressing, feeding, and personal hygiene to facilitate self-care;

(2) Homemaker assistance, including housekeeping, shopping, and meal planning and preparation; and

(3) Respite care and assistance and support provided to the family.”

SECTION 3. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**“§321-11 Subjects of health rules, generally.** The department of health pursuant to chapter 91 may adopt rules that it deems necessary for the public health and safety respecting:

(1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;

(2) Adulteration and misbranding of food or drugs;

(3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;

(4) Privy vaults and cesspools;

(5) Fish and fishing;

(6) Interments and dead bodies;

(7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of these bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead hu-

- man body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
  - (9) Laundries, and the laundering, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bath-houses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of laundering, sanitation, and sterilization by those conducting any of these businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
  - (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, home care agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" has the same meaning as provided in section 321-11.2;
  - (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including~~[-but not limited to,]~~ those built under federal funding;
  - (12) Laboratories;
  - (13) Any place or building where noisome or noxious trades or ~~[manu-  
facturers are]~~ manufacturing is carried on, or intended to be carried on;
  - (14) Milk;
  - (15) Poisons and hazardous substances, the latter term including ~~[but not  
limited to]~~ any substance or mixture of substances ~~[which:]~~ that:
    - (A) Is corrosive;
    - (B) Is an irritant;
    - (C) Is a strong sensitizer;
    - (D) Is inflammable; or
    - (E) Generates pressure through decomposition, heat, or other means,
 if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
  - (16) Pig and duck ranches;
  - (17) Places of business, industry, employment, and commerce, and the processes, materials, tools, machinery, and methods of work done therein; and places of public gathering, recreation, or entertainment;
  - (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manu-

- factured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale, consumption, or use of any food, drug, or cosmetic;
  - (20) Devices as defined in section 328-1;
  - (21) Sources of ionizing radiation;
  - (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to medical examination, vaccination, revaccination, or immunization, whose parent or guardian objects in writing thereto on grounds that the requirements are not in accordance with the religious tenets of an established church of which the parent or guardian is a member or adherent, but no objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
  - (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
  - (24) Fumigation, including the process by which substances emit or liberate gases, fumes, or vapors ~~which~~ that may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
  - (25) Ambulances and ambulance equipment;
  - (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519; and
  - (27) Development, review, approval, or disapproval of an accreditation program for specially trained persons pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102-550.

The department of health may require any certificates, permits, or licenses that it may deem necessary to adequately regulate the conditions or businesses referred to in this section."

SECTION 4. Section 321-11.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All fees paid and collected pursuant to this section and rules adopted in accordance with chapter 91 from facilities seeking licensure or certification by the department of health, including hospitals, nursing homes, home health agencies, home care agencies, intermediate care facilities for the mentally retarded, freestanding outpatient surgical facilities, adult day health care centers, rural health centers, laboratories, adult residential care homes, expanded adult residential care homes, developmental disability domiciliary homes, assisted living facilities, therapeutic living programs, and special treatment facilities, shall be deposited into the office of health care assurance special fund created under section 321-1.4. Any other entities required by law to be licensed by the department of health shall also be subject to reasonable fees established by the department of health by rules adopted in accordance with chapter 91."

SECTION 5. Section 321-15.2,<sup>1</sup> Hawaii Revised Statutes, is amended by amending the definition of “healthcare facility” to read as follows:

““Healthcare facility” means a facility or setting where a frail, elderly, or disabled adult receives care or is provided living accommodations such as a skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, home care agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center, and rehabilitation agency.”

SECTION 6. The department of health shall report to the legislature, no later than twenty days prior to the convening of the regular session of 2010, any recommended proposals to ensure the prevention of financial exploitation of home care agency clients and to improve the home care licensing program.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2014; provided that sections 321-11 and 321-11.5(b), Hawaii Revised Statutes, and the definition of “healthcare facility” in section 321-15.2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 22

S.B. NO. 420

A Bill for an Act Relating to Naturopathic Medicine.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 455, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§455- Public health emergency; temporary and limited license for licensed out-of-state naturopathic physicians.** (a) If a public health emergency or disaster condition is declared by the governor, the board shall allow naturopathic physicians licensed in another state to provide temporary and limited naturopathic medicine in Hawaii under special provisions during the period of the declared public health emergency or disaster condition, subject to limitations and conditions as the governor and the board may prescribe.

(b) A limited and temporary license issued pursuant to this section shall be valid only for the period of the declared public health emergency or disaster condition.

(c) Out-of-state naturopathic physicians shall submit to the board the following information:

(1) Verification of a valid, permanent, current, and unrestricted license to practice naturopathic medicine in another state which is not the



subject of a pending investigation by a state medical board, or another state or federal agency; and

- (2) A valid United States passport or state-issued driver's license for photo identification.

**§455- Exceptions; scope of chapter.** Nothing in this chapter shall be construed to prohibit or restrict:

- (1) The practice of a profession by individuals who are licensed, certified, or registered under the laws of this State who are performing services within their authorized scope of practice;
- (2) The practice of naturopathic medicine by an individual employed by the government of the United States while the individual is engaged in the performance of duties required of the individual by the laws and regulations of the United States;
- (3) The practice of naturopathic medicine by students enrolled in a school that meets the requirements of section 455-3. The performance of naturopathic medicine by students shall be pursuant to a course of instruction or assignments from an instructor and under the supervision of an instructor who is a naturopathic physician licensed pursuant to this chapter; and
- (4) The practice by a doctor of naturopathic medicine duly registered or licensed in another state, territory, or the District of Columbia who is called into this state for consultation with a licensed naturopathic physician, including in-person, mail, electronic, telephonic, fiber-optic, or other telemedicine consultation; provided that:
  - (A) The naturopathic physician from another state shall not open an office, appoint a place to meet patients, or receive calls within this state for the provision of care for a patient who is located in this state; and
  - (B) The licensed naturopathic physician of this state retains control and remains responsible for the provision of care for the patient who is located in this state."

SECTION 2. Chapter 455, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"[NATUROPATHY] NATUROPATHIC MEDICINE"**

SECTION 3. Section 455-1, Hawaii Revised Statutes, is amended to read as follows:

**"§455-1 Definitions.** As used in this chapter:

"Behavioral medicine" means therapy techniques including biofeedback, relaxation training, hypnosis, mindfulness-based stress reduction, and cognitive therapy.

"Board" means the board of [examiners in naturopathy.] naturopathic medicine.

"Common diagnostic procedures" means the use of venipuncture consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, taking of health history, physical examination, radiography, laboratory medicine, and obtaining samples of human tissue as authorized as a minor office procedure.

"Department" means the department of commerce and consumer affairs.

"Diagnosis" means using all recognized and accepted physical and laboratory diagnostic procedures including the taking of blood for diagnostic purposes.

"Disaster condition" means a sudden catastrophic event that overwhelms public order, causes loss of property or life, and exceeds or disrupts the capabilities of available medical resources to provide medical care within a community.

"Homeopathic" means minute doses of [natural medicine.] substances that have been highly diluted and shaken according to standardized pharmaceutical methods.

"Hygiene and immunization" means the use of preventative techniques including personal hygiene, asepsis, public health, and, to the extent allowed by rule, immunizations.

"Legend drug" means any drug falling within section 503(b)(1) of the federal Food, Drug and Cosmetic Act and which is required to be labeled with the statement "Rx only."

"Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or mechanical means.

"Minor office procedures" means care and procedures relative to superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures not including the eye; and the topical and parenteral use of substances consistent with the practice of naturopathic medicine, in accordance with rules established by the board.

["Natural medicine" encompasses substances of botanical, mineral, and animal origin, homeopathic preparations thereof, and substances whose natural state has been improved by any process that does not substantially alter the molecular structure found in nature, including vitamins, minerals, and amino acids; excluding prescription drugs, with the following exceptions: vitamins, minerals, amino acids, and fatty acids.]

"Naturopathic formulary" means vitamins, minerals, dietary supplements, botanical medicines, homeopathic medicines, hormones, and those legend drugs consistent with naturopathic medical practice.

"Naturopathic medicine" means the practice of the art and science of diagnosis, prevention, and treatment of disorders of the body by support, stimulation, or both, of the natural processes of the human body. The practice of naturopathic medicine includes the prescription, administration, dispensing, and use of nutrition and food science, physical modalities, manual manipulation, parenteral therapy, minor office procedures, naturopathic formulary, hygiene and immunization, contraceptive devices, common diagnostic procedures, and behavioral medicine of the type taught in education and training at naturopathic medical colleges; provided that the use of parenteral therapy and performance of minor office procedures shall not be allowed until the board adopts rules in accordance with chapter 91 pursuant to section 455-6.

"Naturopathic physician" means a person who holds a current license issued under this chapter to practice [naturopathy.] naturopathic medicine.

["Naturopathy" means the practice of:

- (1) Natural medicine, natural therapeutics, and natural procedures, for the purpose of removing toxic conditions from the body and improving the quality, quantity, harmony, balance, and flow of the vital fluids, vital tissues, and vital energy; and
- (2) Diagnosing, treating, and caring for patients using a system of practice that bases its treatment of physiological functions and abnormal conditions on natural laws governing the human body; utilizing physiological, psychological, and mechanical methods, such as air, water, light, sunshine, heat and cold, earth, phytotherapy, physio-

therapy, mechano-therapy, naturopathic corrections and manipulation, and natural methods or modalities, together with natural or homeopathic medicines, natural foods, and herbs, and nature's remedies of the type taught in education and training at naturopathic medical colleges. The practice of naturopathy excludes surgery, application of x-rays, and prescribing, dispensing, or using prescription drugs except as provided for in the definition of natural medicine.]

"Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of diet.

"Parenteral therapy" means the administration of substances by means other than through the gastrointestinal tract, including intravenous, subcutaneous and intramuscular injection.

"Physical modalities" means use of physical, chemical, electrical, and other means, including but not limited to heat, cold, air, light, including lasers, water in any of its forms, sound, massage, and therapeutic exercise.

"Radiography" means the ordering of radiographic diagnostic and other imaging studies, including but not limited to computed tomography scans, x-rays, magnetic resonance imaging, positron emission tomography scans, and ultrasounds. The term also means and includes the taking and interpreting of x-rays."

SECTION 4. Section 455-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person desiring to practice [~~naturopathy~~] naturopathic medicine shall be licensed under this chapter. To obtain a license under this chapter, a person shall submit a completed application prescribed by the board[;]; provide the information required under this chapter, rules of the board, and other applicable laws and rules[;]; and pay a nonrefundable application fee and other fees provided in rules adopted by the [~~director~~] department in accordance with chapter 91."

SECTION 5. Section 455-3, Hawaii Revised Statutes, is amended to read as follows:

**"§455-3 Education requirements.** Each applicant shall be a graduate of a school, university, or college of [~~naturopathy~~] naturopathic medicine that has received candidacy status with, or has been accredited by, a regional or a national accrediting body recognized by the United States Department of Education; provided that any applicant who graduated from a college of [~~naturopathy~~] naturopathic medicine prior to 1987 shall be deemed qualified if the college was approved by the board prior to 1987 and has been accredited by a regional or national accrediting body recognized by the United States Department of Education."

SECTION 6. Section 455-4, Hawaii Revised Statutes, is amended to read as follows:

**"§455-4 State board of [~~examiners in naturopathy~~] naturopathic medicine.** The governor shall appoint the board of [~~examiners in naturopathy~~] naturopathic medicine, consisting of five members. Each member shall serve until the member's successor is appointed and qualified. Three members of the board, before appointment, shall have been licensed as a naturopathic physician in the [~~State~~] state and two shall be public members. The members of the board may

elect a chairperson and a vice-chairperson who shall each serve one year or until a successor is elected.”

SECTION 7. Section 455-6, Hawaii Revised Statutes, is amended to read as follows:

“**§455-6 Powers and authority of the board.** In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- (2) Adopt, amend, or repeal rules in accordance with chapter 91 to carry out the purposes of this chapter; provided that all rules shall be approved by the governor and the director of commerce and consumer affairs; and provided further that the rules:
  - (A) May forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
  - (B) Shall establish standards of practice, care, and ethics; and
  - (C) Shall establish the education and training requirements for parenteral therapy and the standards to administer parenteral therapy, and establish examination standards and require the passage of an examination on minor office procedures, which standards and requirements shall take effect after December 31, 2009;
- (3) Develop standards for licensure;
- (4) Issue, renew, suspend, and revoke licenses and fine licensees;
- (5) Investigate and conduct hearings regarding any violation of this chapter and any rules of the board;
- (6) Maintain a record of its proceedings; ~~and~~
- (7) Annually establish and publish a naturopathic formulary that has been approved by the board for prescription, administration, or dispensing by naturopathic physicians; and
- (7) (8) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter.”

SECTION 8. Section 455-8, Hawaii Revised Statutes, is amended to read as follows:

“**§455-8 License to practice; biennial registration.** Licenses to practice ~~[naturopathy]~~ naturopathic medicine shall be issued by the board to those who qualify according to this chapter. Naturopathic physicians licensed under this chapter shall observe and be subject to all state requirements relative to reporting births and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine. These equal rights shall apply to all matters of public health, including the performance of medical examinations and evaluations. Every licensee shall renew the licensee’s license on or before December 31 of each odd-numbered year. Failure to renew the license on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license; provided that the license shall be restored upon written application therefor together with payment of the renewal fee, all delinquent fees, and a penalty fee.”

SECTION 9. Section 455-9, Hawaii Revised Statutes, is amended to read as follows:

**“§455-9 Penalty.** Any person except a licensed naturopathic physician who practices, attempts to practice, or advertises the practice of ~~[naturopathy]~~ naturopathic medicine, or any person who buys, sells, or fraudulently obtains any diploma or license to practice ~~[naturopathy]~~ naturopathic medicine whether recorded or not, or any person who uses the title “naturopath,”<sup>[1]</sup> “naturopath,”<sup>[2]</sup> “doctor of naturopathy,” “doctor of naturopathic medicine,” “naturopathic healthcare,” “naturopathic physician,” “naturopathic medicine,” “naturopathy,” “naturopathic doctor,” or “N.D.”<sup>[3]</sup> or any word or title to induce the belief that the person is engaged in the practice of ~~[naturopathy]~~ naturopathic medicine without complying with this chapter, or any person who violates this chapter, shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the department on behalf of the State.”

SECTION 10. Section 455-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board shall have the power to deny, revoke, suspend, or refuse to renew any license to practice ~~[naturopathy]~~ naturopathic medicine applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee for any cause authorized by law, including but not limited to the following:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients;
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Betraying a patient's confidence;
- (5) Making any untruthful and improbable statement in advertising one's naturopathic practice or business;
- (6) False, fraudulent, or deceptive advertising;
- (7) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (8) Practicing ~~[naturopathy]~~ naturopathic medicine while the ability to practice is impaired by alcohol, drug, physical disability, or mental instability;
- (9) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (10) Professional misconduct or gross carelessness or manifest incapacity in the practice of ~~[naturopathy]~~ naturopathic medicine;
- (11) Conduct or practice contrary to recognized standard of ethics of the naturopathic profession;
- (12) ~~[Utilizing]~~ Using medical service or treatment which is inappropriate or unnecessary;
- (13) Submitting to or filing with the board any notice, statement, or other document required under this chapter which is false or untrue or contains any material misstatement of fact;
- (14) Failure to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final;
- (15) Using the title “physician” without clearly identifying oneself as being a naturopathic physician; ~~[and]~~

- (16) Prescribing, administering, and dispensing naturopathic formulary that are not included in the formulary established by the board under section 455-6; and
- [(16)] (17) Violation of any ~~[provisions]~~ provision of this chapter or rules adopted under this chapter.”

SECTION 11. The revisor of statutes shall replace the terms:

- (1) “Board of examiners in naturopathy” or like terms, with “board of naturopathic medicine” or like terms; and
- (2) “Naturopathy” or like terms, with “naturopathic medicine” or like terms,

as those terms appear in the Hawaii Revised Statutes.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect upon its approval; provided that sections 1, 2, and 3 shall take effect on January 1, 2010.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 23

S.B. NO. 423

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature has historically recognized the importance of making medicaid coverage available for the State’s most vulnerable populations, and has acted to ensure that health care payments made with state funds or controlled by the State are sufficient to cover the actual costs of the care provided. Through the continued efforts of Hawaii’s congressional delegation, a federal medicaid disproportionate share hospital appropriation of \$12,500,000 has been secured for Hawaii. These funds cannot be expended without a matching state appropriation. Together, the combined state and federal funding will help to provide continuing health care in our communities.

The purpose of this Act is to meet rising health care costs and ensure that Hawaii’s residents have continued access to quality health care by appropriating state funds to maximize the availability of the federal disproportionate share hospital allowance.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,291,054 or so much thereof as may be necessary for fiscal year 2009-2010 to match the federal disproportionate share hospital allowance allocated to the State; provided that some appropriated funds may be used to obtain matching federal disproportionate share hospital allowance for prior fiscal year expenditures by the State.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 24

S.B. NO. 539

A Bill for an Act Relating to Corrections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

**"§353-10 [Intake] Reentry intake service centers.** There shall be within the department of public safety, ~~[an] a reentry intake service center for adults in each of the counties, to screen, evaluate, and classify the admission of persons to community correctional centers[-]; and to provide for the successful reentry of persons back into the community.~~ Each center shall be directed and managed by a manager and shall be staffed by a team of psychiatrists, social workers, technicians, and other personnel as may be necessary. The director of public safety may appoint full-time or part-time professional and clerical staff or contract for professional services to carry out the duties of the centers as identified in this section.

The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Provide pretrial assessments on adult offenders for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- (4) Provide correctional prescription program planning and security classification;
- (5) Provide such other personal and correctional services as needed for both detained and committed persons; ~~[and]~~
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs[-];
- (7) Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;
- (8) Provide additional reentry services to include working closely and collaborating with the furlough programs in each county that are currently managed by the department's institutions division;
- (9) Work closely and collaborate with the Hawaii paroling authority; and
- (10) Work closely and collaborate with the corrections program services division."

SECTION 2. Section 353H-21, Hawaii Revised Statutes, is amended to read as follows:

**"[§353H-21] Legislative oversight committee; established.** (a) There is established a legislative oversight committee to ensure transparency in the operations of the department, analyze the effectiveness of the department's governance, operations, and administration of its programs and services, evaluate the department's purchase of community-based programs and services, and review any other issues impacting the department. The legislative oversight committee shall conduct site visits and have access to all areas in correctional facilities,

within the constraints of safety and security. The legislative oversight committee shall meet publicly for input and recommendations for the department. The legislative oversight committee shall be composed of members of the standing committees of both houses of the legislature whose purview is to oversee the department. The legislative oversight committee shall be jointly chaired by the legislative standing committees' respective chairs.

(b) The legislative oversight committee shall cease to exist on July 1, 2009."

SECTION 3. (a) Effective January 1, 2010, there is established within the department of public safety a reentry commission to work with the department in monitoring and reviewing the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees. The reentry commission may make recommendations to the department, the Hawaii paroling authority, and the legislature regarding reentry and parole services.

(b) The reentry commission shall consist of eleven members who shall be appointed by the governor in accordance with section 26-34, Hawaii Revised Statutes, as follows:

- (1) Four members shall be selected by the governor; provided that at least one of the four shall be a former inmate and none shall be government employees;
- (2) Two members shall be selected by the president of the senate;
- (3) Two members shall be selected by the speaker of the house of representatives;
- (4) One member shall represent the American Civil Liberties Union;
- (5) One member shall represent the Community Alliance on Prisons; and
- (6) One member shall be a former inmate who has successfully been reintegrated into the community.

(c) The reentry commission shall meet at least quarterly and members shall serve without compensation, but may be reimbursed for expenses, including travel expenses that are necessary for the performance of their duties.

(d) The commission shall cease to exist on July 1, 2014.

SECTION 4. The department of public safety shall not receive any additional moneys in the department's operating budget to carry out the purposes of this Act. This Act shall not have an adverse employment or economic impact on the intake service center division's current staff as it exists on the day prior to the effective date of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on September 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)



## ACT 25

S.B. NO. 605

A Bill for an Act Relating to Noise.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The department of health currently uses the dBA weighting system to measure noise. The dBA system measures sound in decibels (dB) using the "A weighted" measurement, dBA, such that sound levels measured in dBA correspond to what the human ear hears. An alternative dBC weighting system also measures sound levels but includes measurement of the lower frequencies that cause physical objects such as windows and walls to vibrate. Despite these tangible effects, however, because these lower frequency sound waves are not perceived by the human ear as measured by the dBA weighting system, the sound levels generated do not currently constitute a violation of the community noise control law.

The purpose of this Act is to:

- (1) Require the department of health to add the dBC decibel weighting system to the current dBA decibel weighting system for community noise control;
- (2) Require the department of health to adopt a range of fifty to sixty decibels (using the dBC weighting system) as the maximum sound level permissible at nighttime in any urban land use district, as designated pursuant to section 205-2 Hawaii Revised Statutes; and
- (3) Direct the county liquor commissions, with the assistance of the department of health and the department of labor and industrial relations, to develop recommendations for a permanent maximum sound level, in decibels.

SECTION 2. The county liquor commissions, with the assistance of the department of health and the department of labor and industrial relations, shall develop recommendations for a permanent maximum sound level, in decibels, for liquor establishments licensed under chapter 281, Hawaii Revised Statutes, by no later than twenty days prior to the convening of the 2010 regular session. The recommendations shall address the following:

- (1) Protection of hearing of employees and patrons of the liquor establishment; and
- (2) Protection of hearing of residents whose homes are adjacent to or abut the liquor establishment, including noise levels resulting from early morning trash and bottle disposal.

SECTION 3. Chapter 342F, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**"§342F- Noise measurement; rules.** (a) The department shall adopt rules in accordance with chapter 91 that shall use both the dBC and the dBA sound level measurement systems for community noise control. The department and the county liquor commissions may enforce nighttime noise levels in any urban land use district measured from over fifty to sixty decibels, measured using the dBC weighting system, in certain areas they deem appropriate and not adversely affecting public health and safety.

(b) In any urban land use district, a sound level of more than sixty decibels for bass sound (using the dBC weighting system), measured at a complainant's

site, shall be deemed to exceed the maximum permissible sound at nighttime; provided that, where the complainant's site is within or in close proximity to an area zoned mixed-use or residential, the maximum permissible sound at nighttime shall be fifty decibels dBC.

(c) For purposes of this section:

"Nighttime" means the time between the hours of 10:00 p.m. and 7:00 a.m.; and

"Urban land use district" means property designated as such pursuant to section 205-2."

SECTION 4. Section 342F-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"dBA" means the A-weighted sound level or unit of measurement describing the total sound level of all noises as measured with a sound level meter using the "A" weighting network.

"dBC" means the C-weighted sound level or unit of measurement describing the total sound level of all noises as measured with a sound level meter using the "C" weighting network.

"Decibel" means the unit for measuring the volume of sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (0.0002 dynes per square centimeter)."

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 26

S.B. NO. 695

A Bill for an Act Relating to Workers' Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 386-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. Effective January 1, 1997, and for each succeeding calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale [system] applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the medicare program is not reasonable[;] or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the medicare program, the

director, at any time, may establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services, to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate ~~[that]~~ which shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section every three years or annually, as required. The updates shall be based upon:

- (1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale ~~[system]~~ applicable to Hawaii as prepared by the United States Department of Health and Human Services; or
- (2) A statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services or based upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.

When a dispute exists between an insurer or self-insured employer and a medical services provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider's private patient charge for the service rendered.

When a dispute exists between an employee and the employer or the employer's insurer regarding the proposed treatment plan or whether medical services should be continued, the employee shall continue to receive essential medical services prescribed by the treating physician necessary to prevent deterioration of the employee's condition or further injury until the director issues a decision on whether the employee's medical treatment should be continued. The director shall make a decision within thirty days of the filing of a dispute. If the director determines that medical services pursuant to the treatment plan should be or should have been discontinued, the director shall designate the date after which medical services for that treatment plan are denied. The employer or the employer's insurer may recover from the employee's personal health care provider qualified pursuant to section 386-27, or from any other appropriate occupational or non-occupational insurer, all the sums paid for medical services rendered after the date designated by the director. Under no circumstances shall the employee be charged for the disallowed services, unless the services were obtained in violation of section 386-98. The attending physician, employee, employer, or insurance carrier may request in writing that the director review the denial of the treatment plan or the continuation of medical services."

SECTION 2. This Act does not apply to any dispute resolved prior to the effective date of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 27

S.B. NO. 777

A Bill for an Act Relating to Comprehensive Sexuality Health Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The federal government spends over \$170,000,000 per year to subsidize states and community organizations that provide abstinence-only-until-marriage sex education to youth in the United States. Abstinence-only-until-marriage sex education teaches that the expected standard of human sexual activity is a monogamous, marital, heterosexual relationship and that sex outside such a relationship is physically and psychologically harmful. Abstinence-only education advocates that abstinence is the only method that can effectively prevent disease and pregnancy and provides no additional information about contraception or alternative methods of disease prevention.

In April 2007, a federally funded report found abstinence-only education to be ineffective. The study found that youth receiving abstinence-only education had the same abstinence rate, average age at first intercourse, and average number of sexual partners as youth who did not participate in abstinence-only programs. Report researchers concluded that the recent decline in the rate of teen pregnancy in the United States is most likely the result of improved use of contraception rather than a decrease in sexual activity.

As of September 2008, twenty-five states have refused to participate in abstinence-only programs. These states instead support a comprehensive sexuality education that provides responsible, age-appropriate instruction on the benefits of abstinence as well as a variety of issues related to sexuality, contraception, and disease prevention.

The purpose of this Act is to require any recipient of state funding specifically for sexuality health education programs to provide medically accurate, factual, and comprehensive information that is age appropriate and includes education on abstinence and contraception.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Medically accurate sexuality health education.** (a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

“Age appropriate” means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

“Factual information” means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

“Medically accurate” means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the

American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

“Sexuality health education” means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 28**

S.B. NO. 1005

A Bill for an Act Relating to Publicity Rights.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to confirm the existence of a property right in the commercial use of a person’s name, voice, signature, or likeness known as the right of publicity. The right of publicity protects a person, his or her successors-in-interest, assignees or other transferees or licensees, from the unauthorized appropriation of the person’s name, voice, signature, likeness, or other commercially valuable attributes in connection with the sale, marketing, advertising, or packaging of goods and/or services. While protecting the “right of publicity”, this Act provides exemptions from the need for authorization with respect to certain important, legitimate, and/or constitutionally protected activities.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
PUBLICITY RIGHTS**

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Characteristic” means a distinctive appearance, gesture, or mannerism recognized as an identifying attribute of a personality.

“Deceased individual” means any individual, regardless of the individual’s place of domicile, residence, or citizenship at the time of death or otherwise, who has died.

“Deceased personality” means any individual, regardless of the individual’s place of domicile, residence, or citizenship at the time of death or otherwise, whose name, voice, signature, or likeness had commercial value at the time of the individual’s death, whether or not during the lifetime of that individual, the individual used the individual’s name, voice, signature, or likeness on or in products, merchandise, goods, or for purposes of advertising, selling, or soliciting the purchase or sale of products, merchandise, goods, or services.

“Fund-raising” means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

“Individual” means a natural person, living or dead.

“Likeness” means an image, photograph, painting, sketching, model, diagram, or other recognizable representation of an individual’s face or body, and includes, in the case of a personality, a characteristic.

“Name” means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

“Person” means any natural person, firm, association, partnership, corporation, company, syndicate, receiver, common law trust, conservator, statutory trust, or any other entity by whatever name known or however organized, formed, or created, and includes nonprofit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

“Personality” means any individual whose name, voice, signature, likeness, or other attribute of their personality has commercial value, whether or not that individual uses the individual’s name, voice, signature, likeness, or other attribute of their personality on or in products, merchandise, goods, or for purposes of marketing, advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

“Photograph” means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, in which the individual is readily identifiable.

“Publicity rights trade name registration” means a registration with the department of commerce and consumer affairs of a trade name under chapter 482, using the department’s procedures for trade name registration, wherein the trade name shall consist of the assigning individual or personality’s full legal name and the words “publicity rights”, preferably in all capital letters. In administering publicity rights trade name registrations under this chapter, the department shall be exempt from:

- (1) Any liability in excess of that which the department would have for a trade name registration, other than a “publicity rights trade name registration”;
- (2) Any duty to decide between competing registrants or the rights established by registration; and
- (3) Any duty to construe the meaning of any provision of this chapter; provided that the duties under paragraphs (2) and (3) shall be duties of the courts of competent jurisdiction.

“Signature” means a handwritten or otherwise legally binding form of an individual’s name, written or authorized by that individual, that distinguishes the individual from all other individuals.

**§ -2 Property right in use of name, voice, signature, or likeness.** Every individual or personality has a property right in the use of the individuals or personality’s name, voice, signature, and likeness. The right shall continue to exist for a fixed period of time after death, as prescribed in section -4. This right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will or other testamentary instrument, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, whether the will or other testamentary instrument,

trust, contract, community property agreement, or cotenancy document is entered into or executed by the deceased individual or personality or by any subsequent owner of the deceased individual's or personality's rights as recognized by this chapter; or, if none is applicable, then the owner of the rights shall be determined under the laws of intestate succession applicable to interests in intangible personal property. The right exists whether or not it was commercially exploited by the individual or the personality during the individual or the personality's lifetime. The right does not expire upon the death of the individual or personality, regardless of whether the law of the domicile, residence, or citizenship of the individual or personality at the time of death or otherwise recognizes a similar or identical property right. This chapter is intended to apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death. In the case of a deceased individual or personality, the rights recognized under this chapter shall be deemed to exist at the time of death of any deceased individual or personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided for in section -3.

**§ -3 Transfer, assignment, and license.** (a) A right recognized by this chapter shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer. This right shall not expire upon the death of the individual or personality, but shall be owned and enforceable by the following successors, heirs, or other transferees of living or deceased individuals or personalities:

- (1) Except where a right recognized by this chapter was transferred or assigned before the deceased personality's death by means of any contract or trust instrument, a right recognized by this section shall be owned by the person entitled to the right under the deceased individual's or personality's last will and testament or, if none, then by the beneficiaries or heirs under the laws of intestate succession applicable to interests in intangible personal property generally of the individual or personality's domicile, regardless of whether the law of the domicile of the deceased individual or personality, at the time of death, or thereafter, recognizes a similar or identical property right; or
- (2) If the deceased individual or personality transferred or assigned any interest in a right recognized by this chapter during the individual or personality's life by means of any contract or trust instrument, then the interest so transferred or assigned shall be held as follows:
  - (A) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;
  - (B) If the transferred or assigned interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;
  - (C) If the transferred or assigned interest is subject to any contract, including without limitation an exclusive license, assignment, or a community property agreement, in accordance with the terms of the applicable contract or contracts; or
  - (D) If the interest has been transferred or assigned to a third person in a form that is not addressed in this section, by the individual or personality, or the successor, heir, or other valid transferee of the living or deceased individual or personality, then the interest may be transferred, assigned, or licensed by that third person, in whole or in part, by any otherwise permis-

sible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile, regardless of whether the law of the domicile of the deceased third party, at the time of death, or thereafter, recognizes a similar or identical property right.

(b) A property right exists whether or not those rights were commercially exploited by or under the authority of the individual or the personality, or the individual or personality's successors or transferees, during the individual or the personality's lifetime.

**§ -4 Right is exclusive for individuals and personalities.** (a) For individuals, except to the extent that the individual may have transferred, assigned, or licensed a right recognized by this chapter, the rights protected in this chapter are exclusive to the individual, and are exclusive to the persons entitled to the rights under section -3 for a period of seventy years after the death of the individual, including to the extent that the persons entitled to the rights under section -3 may have transferred, assigned, or licensed these rights to others.

(b) For personalities, except to the extent that the personality may have transferred, assigned, or licensed a right recognized by this chapter, the rights protected in this chapter are exclusive to the personality, and are exclusive to the persons entitled to the rights under section -3 for a period of seventy years after the death of the personality, including to the extent that the persons entitled to the rights under section -3 may have transferred, assigned, or licensed the rights to others.

(c) The rights granted in this chapter may be exercised by a personal representative, attorney-in-fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney-in-fact," and "guardian" shall have the same meanings as in chapter 560.

**§ -5 Infringement of right; use without consent; profit or not for profit.** Except as provided in section -7, any person who uses or authorizes the use of a living or deceased individual or personality's name, voice, signature, or likeness, on or in goods, merchandise, or services entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund-raising or solicitation of donations, or if any person disseminates or publishes advertisements in this state that contain a living or deceased individual or personality's name, voice, signature, or likeness, without express or implied consent of the owner of the right, has infringed a publicity right under this chapter. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit.

**§ -6 Infringement of right; circuit courts; injunctions; liability for damages and profits; impoundment; destruction; attorneys' fees.** (a) The circuit courts of this State may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of a right recognized by this chapter.

(b) Any person who infringes a right granted by this chapter shall be liable for the greater of \$10,000 or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages; provided that each search of an individual's name on an internet search engine shall be exempt from the statutory damages identified in this subsection. To prove profits under this subsection, the injured party or parties may submit proof of gross revenues attribut-



able to the infringement, and the infringing party may be required by the court to provide evidence of the infringing party's deductible expenses. For the purposes of computing statutory damages, the use of a name, voice, signature, or likeness constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, or likeness is displayed.

(c) At any time while an action under this chapter is pending, the court may, pursuant to Rule 65 of the Hawaii Rules of Civil Procedure, order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, master recordings, copies of recordings, optical disk stampers, or other articles by means of which these materials may be reproduced.

(d) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, master recordings, copies of recordings, optical disk stampers, or other articles by means of which these materials may be reproduced; provided that the property of a common carrier, internet service provider, internet search engine provider, or other similarly situated entities shall be exempt from the destruction or disposition requirements identified in this subsection; provided further that if the entity has received written notice of the infringing nature of the material submitted to the entity's agent designated pursuant to 17 United States Code section 512(c) and that entity fails to remove the material expeditiously following receipt of the notice, then this exemption shall not apply.

(e) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(f) The remedies provided for in this section are cumulative and are in addition to any others provided for by law.

**§ -7 Exemptions from use restrictions; when chapter does not apply.** (a) For purposes of section -5, the use of a name, voice, signature, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from the requirement of advance consent under this subsection does not cease to be exempt if it appears in the form of a paid advertisement and the principal purpose of the advertisement is to comment on the matter.

(b) This chapter shall not apply to the use or authorization for use of an individual or personality's name, voice, signature, or likeness, in, or to display, any of the following:

- (1) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;
- (2) A literary work, theatrical work, musical composition, sound recording, radio program, motion picture, television program or other audiovisual work, magazine article, news story, public affairs report, or sports broadcast or account, or materials related to a political campaign, when the use does not inaccurately claim or state an endorsement by the individual or personality;
- (3) An advertisement or commercial announcement for a use permitted by subsection (a) or (g) or paragraph (1) or (2);

- (4) An advertisement, commercial announcement, or packaging for the sale, distribution, broadcast, performance, or display of a literary, musical, cinematographic, or other artistic work, or the recording or copy thereof, using the name, voice, signature, or likeness of the writer, author, composer, director, actor, or artist who created the work, where the individual or personality has expressly or impliedly consented to the use of the individual or personality's name, voice, signature, or likeness on or in connection with the initial or any subsequent sale, distribution, performance, or display thereof; and
- (5) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates an original signature of the author.
- (c) It shall not constitute a defense to an infringement action under this chapter that the use of an individual or personality's name, voice, signature, or likeness includes more than one individual or personality.
- (d) Section -5 shall not apply to the owners or employees of any medium used for advertising, including but not limited to newspapers, magazines, radio and television stations, online service providers, billboards or other devices, who, without prior notice that the use would constitute an infringement under this chapter, have published or disseminated any advertisement or solicitation that would constitute an infringement under this chapter, unless the infringement was part of an advertisement or solicitation promoting the services of the advertising medium itself.
- (e) This chapter shall not apply to a use or authorization for use of an individual or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction, or to accurately describe the goods or services of a party.
- (f) This chapter shall not apply to the use of an individual or personality's name, voice, signature, or likeness when the use of the individual or personality's name, voice, signature, or likeness is an insignificant, de minimis, or incidental use.
- (g) This chapter shall not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in a manner which is lawful under this chapter.

**§ -8 Procedure for identifying transferees, licensees, or assignees; requirement to seek damages or relief.** (a) An assignee or transferee of publicity rights shall have the right to make a publicity rights trade name registration. To obtain the benefit of the protection of this section, the assignee or transferee shall keep the publicity rights trade name registration in force and shall diligently maintain the accuracy of the information in the publicity rights trade name registration.

(b) Publicity rights of a deceased person that were not previously assigned or transferred shall be part of the deceased person's estate and shall be administered by the personal representative of the deceased person as personal property of the deceased person. On or before closing of probate of a deceased person's estate, the publicity rights of the deceased person shall vest in the transferees of the personal property of the estate in conformity with the deceased person's will or probate order. If publicity rights are not expressly addressed by the terms of the will or a probate order, and if a publicity rights trade name registration is not

in effect at the time of the relevant assignment or license, after probate closes, any one of the transferees of the personal property of the deceased person's estate shall have the right to assign or license the publicity rights of the deceased person, and a valid license from any of the transferees of the personal property of the deceased person's estate shall constitute a complete defense to any infringement action under this section.

(c) Any person seeking to license publicity rights from a living person shall have the right to presume that a living individual or personality has the right to assign or license the individual or personality's publicity rights unless there is a publicity rights trade name registration for that individual or personality. If there is a publicity rights trade name registration for that individual or personality, the person seeking to license publicity rights shall inform the living person in writing that an assignment or license shall be sought from the holder of the publicity rights trade name registration before entering into the assignment or license.

(d) If there is a publicity rights trade name registration for a given individual or personality, any person seeking to license publicity rights for that individual or personality shall have the right to presume that the holder of the publicity rights trade name registration has the right to assign or license the individual or personality's publicity rights and a valid license from the registered holder of the publicity rights trade name registration shall constitute a complete defense to any infringement action under this section.

(e) A person commits an offense if the person signs, manually or via electronic means, a document the person knows is false in any material respect with the intent that the document be delivered or transmitted to the director of commerce and consumer affairs in connection with a publicity rights trade name registration under this section. An offense under this subsection shall be a class C felony and may carry a fine not to exceed \$10,000.

(f) A person commits a misdemeanor if the person negligently and without intent to defraud signs, manually or via electronic means, a document that is false in any material respect with intent that the document be delivered or transmitted to the director of commerce and consumer affairs in connection with a publicity rights trade name registration under this section. Commission of a misdemeanor under this subsection may carry a fine not to exceed \$2,000.

(g) Any person who knowingly makes a false or fraudulent representation or declaration in connection with a publicity rights trade name registration pursuant to this section shall be liable for all damages sustained as a result of the false or fraudulent publicity rights trade name registration as determined by a court of competent jurisdiction."

**SECTION 3.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 4.** This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 29

S.B. NO. 1058

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. (a) There is established a medical cannabis task force that shall be placed within the department of public safety for administrative purposes. The purpose of the medical cannabis task force shall be to review issues relating to the medical marijuana program. The director of public safety shall be responsible for administering the work of the medical cannabis task force. The medical cannabis task force shall:

- (1) Examine current state statutes, state administrative rules, and all county policies and procedures relating to the medical marijuana program;
- (2) Examine all issues and obstacles that qualifying patients have encountered with the medical marijuana program;
- (3) Examine all issue and obstacles that state and county law enforcement agencies have encountered with the medical marijuana program;
- (4) Compare and contrast Hawaii's medical marijuana program with all other state medical marijuana programs; and
- (5) Address other issues and perform any other function necessary as the task force deems appropriate, relating to the medical marijuana program.

(b) The medical cannabis task force shall consist of thirteen members as follows:

- (1) The director of public safety or the director's designee;
- (2) The director of health or the director's designee;
- (3) The director of transportation or the director's designee;
- (4) The attorney general or the attorney general's designee;
- (5) The chairperson of the board of agriculture or the chairperson's designee;
- (6) The president of the Drug Policy Forum of Hawaii or the president's designee;
- (7) One medical cannabis advocate who is a patient that uses cannabis in a medically authorized or recommended manner to be appointed by the governor;
- (8) A physician who authorizes or recommends the use of medical cannabis that is nominated from a list jointly submitted by the senate president and speaker of the house of representatives to be appointed by the governor;
- (9) A Hawaii-licensed physician who specializes in pain control and has issued a medical cannabis recommendation that is nominated from a list jointly submitted by the senate president and speaker of the house of representatives to be appointed by the governor;
- (10) The president of West Oahu Hope for a Cure Foundation or the president's designee;
- (11) The director of Americans for Safe Access – Honolulu Chapter, or the director's designee;
- (12) One registered caregiver to be appointed by the governor; and
- (13) One representative of the American Civil Liberties Union.

(c) The members of the task force shall select a chairperson from among its members, who, in conjunction with the director of public safety, shall establish task force procedures, including the meeting schedule, voting procedures, and member duties.

The members of the task force shall serve without compensation, but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their official duties.

(d) No later than August 30, 2009, the legislative reference bureau shall complete and submit to the task force a report on the policies and procedures for access, distribution, security, and other relevant issues related to the medical use of cannabis for all the states that currently have a medical cannabis program.

(e) The director of public safety shall submit a report of the medical cannabis task force's findings and recommendations, including any proposed legislation and rules, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

(f) The medical cannabis task force shall cease to exist on June 30, 2010.

## PART II

SECTION 2. The legislature finds that *Salvia divinorum*, otherwise known as "diviner's sage" or "magic mint," is not regulated in Hawaii. The legislature further notes that several countries, such as Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden have passed regulatory laws on *Salvia divinorum* or its primary psychoactive constituent, salvinorin A. In the United States, California, Delaware, Florida, Illinois, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia regulate *Salvia divinorum*, with approaches ranging from classification as a Schedule I controlled substance to placing restrictions on its sale. The legislature finds that possible regulation of *Salvia divinorum* and its primary psychoactive constituent, salvinorin A, is worthy of formal examination by the State.

SECTION 3. (a) There is established a *Salvia divinorum* task force within the department of public safety for administrative purposes. The purpose of the *Salvia divinorum* task force shall be to review the effects of *Salvia divinorum* and its primary psychoactive constituent, salvinorin A. The director of public safety shall be responsible for administering the work of the *salvia divinorum* task force. The *Salvia divinorum* task force shall:

- (1) Research the uses and effects of *Salvia divinorum* and salvinorin A on adults and minors;
- (2) Research all other states' legislation relating to *salvia divinorum* and salvinorin A;
- (3) Recommend appropriate legislation resulting from its findings to address the sale and use of *Salvia divinorum* and salvinorin A in Hawaii; and
- (4) Address other issues and perform any other function necessary as the task force deems appropriate, relating to *Salvia divinorum* or salvinorin A.

(b) The *salvia divinorum* task force shall consist of the following members:

- (1) The director of public safety or the director's designee;
- (2) The director of health or the director's designee;
- (3) The administrative director of the judiciary or the administrative director's designee;

- (4) The attorney general or the attorney general's designee;
- (5) The president of the Hawaii State Bar Association or the president's designee; and
- (6) The president of the Drug Policy Forum of Hawaii or the president's designee.
- (c) The members of the task force shall select a chairperson from among its members, who, in conjunction with the director of public safety, shall establish task force procedures, including the meeting schedule, voting procedures, and member duties.

The members of the task force shall serve without compensation, but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their official duties.

(d) The director of public safety shall submit a report of the *Salvia divinorum* task force's findings and recommendations, including any proposed legislation or rules, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

(e) The *Salvia divinorum* task force shall cease to exist on June 30, 2010.

### PART III

SECTION 4. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 30

S.B. NO. 1183

A Bill for an Act Relating to Discriminatory Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State of Hawaii has strong laws against discrimination in employment on the basis of disability, embodied in sections 378-1 and 378-2, Hawaii Revised Statutes, and rules adopted by the civil rights commission. In many respects, state law provides stronger protections than those provided under federal law prohibiting employment discrimination based on disability. The legislature recognizes that pursuant to *California Federal Sav. and Loan Ass'n v. Guerra*, 479 U.S. 272, 107 S.Ct. 683 (1987), federal law is a "floor" beneath which protections against discrimination should not drop, rather than a "ceiling" above which protections cannot rise under state anti-discrimination laws.

The legislature further finds that on September 25, 2008, President George W. Bush signed into law the ADA Amendments Act of 2008, P.L. 110-325 ("ADAAA"). In the ADAAA, Congress found that several United States Supreme Court decisions interpreted the definition of disability inconsistently with legislative intent. The ADAAA clarified laws relating to employment disability, broadening the definition of disability and resulting in certain federal law protections that are stronger than corresponding protections currently provided under Hawaii state law.

The purpose of this Act is to require the Hawai'i civil rights commission to adopt administrative rules to define certain terms to conform state law protections against disability discrimination in employment to recently amended federal law.

SECTION 2. The Hawai'i civil rights commission, pursuant to its authority under section 368-3(9), Hawaii Revised Statutes, shall adopt rules to define or amend, as applicable, the following terms for purposes of chapter 378, Hawaii Revised Statutes: "major life activities"; "being regarded as having such an impairment"; "disability"; and "substantially limits". The Hawai'i civil rights commission may define such other terms as necessary to effectuate the purposes of chapter 378, Hawaii Revised Statutes, consistent with section 1 of this Act.

SECTION 3. The Hawai'i civil rights commission shall complete the rulemaking process for purposes of section 2 of this Act no later than December 31, 2010.

SECTION 4. Until the completion of the rulemaking under section 3 of this Act, the Hawai'i civil rights commission shall apply, at minimum, the definitions in the American with Disabilities Act Amendments Act of 2008 (ADAAA); provided that the definition of "disability" under section 378-1, Hawaii Revised Statutes, and the implementing administrative rules related thereto shall be construed at minimum to conform to the ADAAA.

SECTION 5. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 31

S.B. NO. 1206

A Bill for an Act Relating to Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 49-3, Hawaii Revised Statutes, is amended to read as follows:

**"§49-3 Additional powers of counties. (a)** In addition to the powers ~~[which]~~ that it may now have, any county under this chapter may:

- (1) Construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the county, or partially within or partially without the county, and acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection ~~[therewith]~~ with the land rights or undertake the establishment and administration of a loan program as authorized by the law;
- (2) Operate and maintain any undertaking and maintain a loan program as authorized by law and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of the county;
- (3) Issue its revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking or the establishment and administration of any loan program as authorized by law;
- (4) Impose, prescribe, and collect rates, rentals, fees, and charges for the use and services of, and the facilities and commodities furnished

by, the undertaking or the use and services of the loan program as authorized by law, as provided in section 49-10; and

- (5) Pledge to the punctual payment of the revenue bonds and interest thereon or covenant to pay into any special funds from which any revenue bonds may be payable, all or any portion of the revenue of the undertaking or loan program or of any part thereof, or the user taxes derived therefrom, or any combination of both (including improvements, betterments, or extensions thereto thereafter constructed or acquired) sufficient, among other things, to pay the revenue bonds and interest thereon as the same shall become due and create and maintain reasonable reserves therefor.

(b) The governing body of the county in determining the cost may include ~~all~~:

- (1) All costs and estimated costs of the issuance of the revenue bonds~~all~~;
- (2) All architectural, engineering, inspection, financial, and legal expenses~~all~~;
- (3) All costs of establishing or administering a loan program authorized by law~~the~~;
- (4) The cost of causing the payment of the principal or interest or both of the revenue bonds to be insured or guaranteed~~the~~;
- (5) The initial cost of any support facility obtained as permitted by section 49-8~~;~~; and ~~interest which it~~
- (6) Interest that is estimated will accrue on the bonds during the construction or origination period and for six months thereafter.

(c) Subject to the approval of the governing body, or in counties with a population of five hundred thousand or more if authorized by a county charter to issue revenue bonds in its own name, a board may exercise all or any part of the powers vested in the county pursuant to this chapter but only with respect to an undertaking or loan program under the jurisdiction of ~~such~~ the board. In the event a board ~~shall exercise~~ exercises any of the powers vested in the county pursuant to this chapter, the term governing body as used in this chapter shall be deemed to mean the board, and the term director of finance shall be deemed to mean the chief financial officer of the board."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 32

S.B. NO. 1218

A Bill for an Act Relating to Mortgage Loan Originators.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to implement a regulatory system, to be effective July 1, 2010, for mortgage loan originators. Although the legislature has struggled with this issue for several years, the passage of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act of 2008), 12 United States Code sections 5101 to 5116, necessitates immediate state action on this issue. Under the S.A.F.E. Mortgage



Licensing Act, states that do not implement a sufficient regulatory system for mortgage loan originators will be subject to federal oversight and regulation of their residential mortgage industries. The legislature finds that it is in the best interest of this State and its residents for regulation of mortgage loan originators to remain the purview of the State.

The model act upon which this Act is based has been deemed to be compliant with the S.A.F.E. Mortgage Licensing Act by the United States Department of Housing and Urban Development. The legislature finds that this Act provides for an orderly transition from the current licensing system under chapter 454, Hawaii Revised Statutes, to the new federally-mandated regulatory system that will become effective July 1, 2010. The legislature finds that this measure provides for an orderly one-year transition period where chapter 454 will continue to control licensing and oversight while the division of financial institutions of the department of commerce and consumer affairs enacts the necessary rules and procedures to fully implement the regulatory system created by this Act. The legislature further finds that the July 1, 2010 implementation of the new regulatory system created by this Act requires the cooperation of the commissioner of financial institutions. Therefore, the legislature respectfully asks that the commissioner of financial institutions collaborate openly and in good faith with the legislature to ensure a smooth transition to the new regulatory system, which shall become effective on July 1, 2010.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter to title 22 to be appropriately designated and to read as follows:

**“CHAPTER  
SECURE AND FAIR ENFORCEMENT FOR MORTGAGE  
LICENSING ACT**

**§ -1 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

“Advertisement” or “advertising” means:

- (1) Issuing any card, sign, or device to any person;
- (2) Causing, permitting, or allowing the placement of any sign or marking on or in any building, vehicle, or structure;
- (3) Placing an advertisement in any newspaper, magazine, or on the Internet;
- (4) Listing or advertising in any directory under a classification or heading that includes the words “mortgage loan originator,” or the like;
- (5) Broadcasting commercials by airwave or internet transmission; or
- (6) Transmitting any written communication, including:
  - (A) A letter or a postcard that encourages a person to borrow from or through a mortgage loan originator; or
  - (B) A written communication that encourages a person to refinance the person’s existing residential mortgage loan and mentions that a new residential mortgage loan will reduce the monthly payment the borrower will pay on the new residential mortgage loan or reduce the interest rate on the borrower’s existing residential mortgage loan.

“Applicant” means an individual applying for the issuance of a license or a renewal of a license under this chapter.

“Clerical or support duties” include the following activities subsequent to the receipt of an application:

- (1) The receipt, collection, distribution, and analysis of information for the processing or underwriting of a residential mortgage loan; and
- (2) Communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling borrowers about residential mortgage loan rates or terms.

“Commissioner” means the commissioner of financial institutions.

“Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

“Immediate family member” means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, and equivalent adoptive relationships.

“Individual” means a natural person.

“Insured depository institution” means the same as in 12 United States Code Section 1813(c)(2); provided that it also includes any credit union whose deposits are insured by the National Credit Union Association.

“Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a mortgage loan originator or a person who is exempt from licensing as a mortgage loan originator under this chapter.

“Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

- (1) Takes a residential mortgage loan application; or
- (2) Offers or negotiates terms of a residential mortgage loan.

“Nationwide Mortgage Licensing System” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

“Nontraditional mortgage product” means any mortgage product other than a thirty-year fixed rate residential mortgage loan where the interest rate is fixed for the thirty-year term.

“Person” means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.

“Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

- (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (3) Negotiating on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction;
- (4) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker by the State; and
- (5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4).

“Registered mortgage loan originator” means any individual who:

- (1) Meets the definition of mortgage loan originator and is an employee of:
  - (A) An insured depository institution;
  - (B) A subsidiary that is:
    - (i) Owned and controlled by an insured depository institution; and
    - (ii) Regulated by a federal banking agency; or
  - (C) An institution regulated by the Farm Credit Administration; and
- (2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

“Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act, 15 United States Code Section 1601 et seq, or residential real estate.

“Residential real estate” means any real property located in this state, upon which a dwelling is constructed or intended to be constructed.

“Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System.

**§ -2 Exemptions.** This chapter shall not apply to the following:

- (1) A registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence;
- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by an agent of a lender, mortgage broker, or other mortgage loan originator;
- (5) An individual engaging solely in loan processor or underwriter activities; provided that an individual, including an independent contractor, who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, and any loan processor or underwriter, including an independent contractor, who advertises that the individual can or will perform any of the activities of a mortgage loan originator or engages in the activities of a mortgage loan originator shall not be exempt under this chapter and shall obtain and maintain a license under this chapter and a valid unique identifier issued by the Nationwide Mortgage Licensing System;
- (6) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity

is compensated by a lender, a mortgage broker, or other mortgage loan originator or by an agent of the lender, mortgage broker, or other mortgage loan originator; or

- (7) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in Section 101(53D) of Title 11, United States Code.

§ -3 **Requirement of licensure.** Effective August 1, 2010, or such later date approved by the United States Department of Housing and Urban Development pursuant to the authority granted under Public Law 110-289, section 1508(e), an individual, unless specifically exempted from this chapter, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually, a license under this chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System, and shall submit to the Nationwide Mortgage Licensing System any reports that shall be in a form and contain information as the Nationwide Mortgage Licensing System may require.

§ -4 **License and registration; application; issuance.** (a) Applicants for a license shall apply in a form as prescribed by the commissioner.

(b) To fulfill the purposes of this chapter, the commissioner shall establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) For the purpose and the extent necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System.

(d) In connection with an application for licensing as a mortgage loan originator, the applicant, at a minimum, shall furnish to the Nationwide Mortgage Licensing System information concerning the applicant's identity, including:

- (1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System including the submission of authorization for the Nationwide Mortgage Licensing System and the commissioner to obtain:
  - (A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 United States Code 1681 et seq; and
  - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(e) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(f) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting and distributing information to and from any source directed by the commissioner.

**§ -5 Issuance of license.** The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

- (1) The applicant has never had a mortgage loan originator license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) The applicant has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under chapter 853 to a felony in a domestic, foreign, or military court:
  - (A) During the seven-year period preceding the date of the application for licensing and registration; or
  - (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;provided that any pardon of a conviction shall not be deemed a conviction for purposes of this section;
- (3) The applicant has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage loan originator shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial condition. A determination that an individual has not shown financial responsibility may be based on:
  - (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
  - (B) Current outstanding tax liens or other government liens and filings;
  - (C) Foreclosures within the past three years; and
  - (D) A pattern of seriously delinquent accounts within the past three years;
- (4) The applicant has completed the pre-licensing education requirement described in section -6;
- (5) The applicant has passed a written test that meets the test requirements in section -7; and
- (6) The applicant has met the surety bond requirement as required in section -13.

**§ -6 Pre-licensing and re-licensing; education of mortgage loan originators.** (a) A person shall complete at least twenty hours of pre-licensing education approved in accordance with subsection (b) that includes:

- (1) Three hours of federal law and regulations;
- (2) Three hours of ethics, that shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any pre-licensing education course approved by the Nationwide Mortgage Licensing System that is provided by the employer of the applicant, an entity that is affiliated with the

applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System in subsection (a) for any state shall be accepted as credit towards completion of pre-licensing education requirements in this State.

(f) A person previously licensed under this chapter and applying to be licensed under this chapter shall prove to the satisfaction of the commissioner that the person has completed all of the continuing education requirements for the year in which the license was last held.

**§ -7 Testing of mortgage loan originators.** (a) In order to meet the passing of the written test requirement in section -5, an applicant shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and administered by a test provider approved by the Nationwide Mortgage Licensing System based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) Ethics;
- (2) Federal law and regulations pertaining to mortgage origination;
- (3) State law and rules pertaining to mortgage origination; and
- (4) Federal and state law, rules and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall have passed a qualified written test if the individual achieves a test score of seventy-five per cent of the correct answers to questions or better. An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer not taking into account any time during which the individual is a registered mortgage loan originator, shall retake the test.

**§ -8 Standards for license renewal.** (a) The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for licensure under section -5;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements in section -9; and
- (3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The commissioner may

adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System.

**§ -9 Continuing education; mortgage loan originators.** (a) Each year, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) that shall include at least:

- (1) Three hours of federal law and regulations;
- (2) Two hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any education course that is approved by the Nationwide Mortgage Licensing System and provided by the employer of the mortgage loan originator, an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(e) A licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken, except for continuing education credits received pursuant to this chapter; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive continuing education credit for the course taught at the rate of two hours credit for every one hour taught.

(g) Continuing education courses as described in subsection (a) and approved by the Nationwide Mortgage Licensing System for any state, that are successfully completed by a licensed mortgage originator, shall be accepted as credit towards completion of continuing education requirements in this state.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of section -8(a)(1) and (3) may make up any deficiency in continuing education as established by rule adopted by the commissioner.

**§ -10 Authority to require license.** In addition to any other duties imposed upon the commissioner, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System. The commissioner may establish by rule pursuant to chapter 91, requirements for mortgage loan originators, including:

- (1) Background checks of:
  - (A) Criminal history through fingerprint or other databases;
  - (B) Civil or administrative records;
  - (C) Credit history; and

- (D) Any other source deemed necessary by the Nationwide Mortgage Licensing System and registry;
- (2) Fees to apply for or renew licenses through the Nationwide Mortgage Licensing System;
- (3) The setting or resetting as necessary of license renewal and reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activity the commissioner deems necessary to participate in the Nationwide Mortgage Licensing System.

**§ -11 Nationwide Mortgage Licensing System; registry information; challenge process.** The commissioner shall establish a process by rule pursuant to chapter 91 whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System by the commissioner.

**§ -12 Enforcement authorities; violations; penalties.** (a) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91:

- (1) Deny, suspend, revoke, condition, or decline to renew a license because of a violation of this chapter, rules, an order, or a directive entered under this chapter;
- (2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensed mortgage loan originator fails at any time to meet the requirements of section -6 or section -8, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this chapter for violations of this chapter;
- (4) Impose fines on persons subject to this chapter; and
- (5) Issue orders or directives under this chapter as follows:
  - (A) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
  - (B) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
  - (C) Enter immediate temporary orders to cease doing business under a license or interim license issued pursuant to the authority granted under this chapter if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter; or
  - (D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any rule prescribed by the commissioner under this chapter or order issued under the authority of this chapter.

(c) The maximum penalty for each act or omission described in subsection (b) shall be \$25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner shall be a separate and distinct violation.



**§ -13 Surety bond; required.** (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person may be used in lieu of the mortgage loan originator's surety bond.

(b) The surety bond shall provide coverage for each mortgage loan originator in an amount prescribed in subsection (c). The surety bond shall be in a form as prescribed by the commissioner. The commissioner may adopt rules pursuant to chapter 91 with respect to the requirements for the surety bonds necessary to accomplish the purposes of this chapter.

(c) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the commissioner.

(d) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.

(e) Immediately upon recovery of any action on the bond, the commissioner may require the filing of a new bond.

**§ -14 Confidentiality.** (a) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to:

- (1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or a state; or
- (2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System applicable to the information or material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(d) Notwithstanding chapter 92F, the examination process and related information and documents, including the reports of examination, are confidential and are not subject to discovery or disclosure in civil or criminal lawsuits.

(e) Notwithstanding any law to the contrary, the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of this section.

(f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement

actions against, mortgage loan originators that are included in the Nationwide Mortgage Licensing System for access by the public.

**§ -15 Investigation and examination authority.** (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- (1) Criminal, civil, and administrative history information, including nonconviction data under chapter 853;
- (2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and
- (3) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensed mortgage loan originator, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensed mortgage loan originator, individual, or person subject to this chapter shall provide to the commissioner upon request, the books and records relating to the operations of the licensee, individual, or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator, individual, or person subject to this chapter concerning their business.

(d) Each licensed mortgage loan originator, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensed mortgage loan originator or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensed mortgage loan originator have been, or are at risk of being altered

or destroyed for purposes of concealing a violation of this chapter, the licensed mortgage loan originator or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) The commissioner may:

- (1) Retain attorneys, accountants, or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensed mortgage loan originator, individual, or person subject to this chapter;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; and
- (5) Accept audit reports made by an independent certified public accountant for the licensed mortgage loan originator, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether such licensed mortgage loan originator, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(h) No licensed mortgage loan originator, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination fee based upon the cost per hour per examiner for all mortgage loan originators examined by the commissioner or the commissioner's staff. The hourly fee shall be \$40 or an amount as the commissioner shall establish by rule pursuant to chapter 91.

**§ -16 Mortgage call reports.** Each licensed mortgage originator shall submit to the Nationwide Mortgage Licensing System reports of condition, using the form entitled "REPORT OF CONDITION", which shall be in such form and contain such information as the Nationwide Mortgage Licensing System may require.

**§ -17 Prohibited practices.** It shall be a violation of this chapter for a mortgage loan originator to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower that provides in substance that the person or individual subject to this chapter may

- earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
  - (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
  - (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations thereunder;
  - (8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted thereunder, applicable to any business authorized or conducted pursuant to this chapter;
  - (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
  - (10) Negligently make any false statement or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System or in connection with any investigation conducted by the commissioner or another government agency;
  - (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
  - (12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
  - (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
  - (14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction; or
  - (15) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan. A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication. Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication.

**§ -18 Powers of commissioner.** (a) The commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary for the administration of this chapter.

(b) In addition to any other powers provided by law, the commissioner shall have the authority to:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules and issue declaratory rulings or informal nonbinding interpretations;
- (3) Develop requirements for licensure through rules, including establishing the content of the written tests required under section -7;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (5) Create fact-finding committees that may make recommendations to the commissioner for the commissioner's deliberations;
- (6) Require an applicant or any of its officers, directors, employees, partners, members, managers, and agents to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (7) Contract with qualified persons, including investigators who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (8) Require that all fees, fines, and charges collected by the commissioner under this chapter be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91; and
- (10) Require a mortgage loan originator to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or in the alternative, any policy position of the Conference of State Bank Supervisors.

**§ -19 Unique identifier shown.** The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

**§ -20 Report to Nationwide Mortgage Licensing System.** Notwithstanding any other law to the contrary, the commissioner is required to regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System subject to the confidentiality provisions contained in section -14.

**§ -21 Fees and costs.** (a) Each application for a mortgage loan originator license shall be accompanied by an application fee of \$250, or an amount as the commissioner shall establish by rule pursuant to chapter 91.

(b) Upon obtaining approval for a license, an initial license fee shall be paid to the commissioner in the amount of \$175 or an amount as the commissioner shall establish by rule pursuant to chapter 91.

(c) By December 31 of each year, every mortgage broker and loan originator licensed under this chapter shall pay an annual license renewal fee of \$325, or an amount as the commissioner shall establish by rule pursuant to chapter 91.”

SECTION 3. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-502 Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any principal office, branch, agency, automatic teller machine, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this State as a mortgage broker licensed under chapter 454, loan originator licensed under chapter , or as a real estate collection servicing agent.”

SECTION 4. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

**“§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, operating subsidiaries of a bank established and operating under section 412:5-203, trust companies, savings associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one’s own funds for one’s own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person’s practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person’s practice as a real estate broker or salesperson;
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, “loan purchase agreement” means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor;
- (6) Foreign lender as defined in section 207-11; ~~and~~
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:

- (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purposes of section 454-4; and
  - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14[-]; and
- (8) An individual licensed as a mortgage loan originator under chapter .”

SECTION 5. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)[-]; provided that, in order to establish regulatory practices for residential mortgage lending, a surcharge of \$100 shall be charged to every mortgage broker and mortgage solicitor, which surcharge shall be due on December 31, 2009. Failure of any mortgage broker or mortgage solicitor to pay the biennial renewal fee on or before December 31 of an even-numbered year or the surcharge shall constitute an automatic forfeiture of the license. The forfeited license may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee is paid in addition to the delinquent license fee or surcharge. A licensee who fails to restore a license as provided in this subsection shall apply as a new applicant.”

SECTION 6. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of “creditor” to read as follows:

““Creditor” means any bank; savings and loan association; trust company; financial services loan company; credit union; mortgage banker, broker, or solicitor; mortgage loan originator; pawnbroker; mutual benefit society or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue ~~[such]~~ a loan of money or credit.”

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult

- living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
  - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
  - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
  - (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
  - (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
  - (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
  - (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
  - (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
  - (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
  - (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
  - (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
  - (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
  - (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
  - (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
  - (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
  - (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same



- type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
  - (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
  - (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
  - (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (Title 42 United States Code Section 1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
  - (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
  - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
  - (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
  - [(27)] The department of commerce and consumer affairs on:
    - (A) Each principal of every non-corporate applicant for a money transmitter license; and
    - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9; [and]
  - (28) The department of commerce and consumer affairs on an applicant for a mortgage loan originator's license as provided by chapter ; and
  - [(28)] (29) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 8. Effective August 1, 2010:

- (1) No new license shall be issued and no license renewal shall be effected under chapter 454, Hawaii Revised Statutes; and
- (2) An individual who is subject to this Act shall be required to be licensed under chapter , Hawaii Revised Statutes, by such later date approved by the United States Department of Housing and Urban Development, pursuant to the authority granted under Public

Law 110-289, section 1508(e). As of the date that an individual is required to be licensed under chapter , Hawaii Revised Statutes, the remaining pro rata balance of the fees paid by the individual under chapter 454, Hawaii Revised Statutes, shall be applied to the individual's fees due under chapter , Hawaii Revised Statutes, until exhausted.

**SECTION 9.** An individual shall not be subject to chapter 454, Hawaii Revised Statutes, upon the effective date of the individual's license under the new chapter established under this Act; provided that this section shall not affect rights and duties that have matured, penalties that were incurred, and proceedings that were begun before the effective date of the individual's license under this Act.

**SECTION 10.** The commissioner of financial institutions shall prepare a report detailing the implementation of this Act. The report shall include an evaluation of administrative rules necessary for the implementation of this Act, budget recommendations, requests for staff and resources, developments in federal law and regulations that affect the implementation of this Act, and guidance or recommendations put forth by the United States Department of Housing and Urban Development. The commissioner of financial institutions shall report findings, recommendations, and any proposed amendments or additions to this Act to the legislature no later than twenty days prior to the convening of the regular session of 2010.

**SECTION 11.** There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$159,400 or so much thereof as may be necessary for fiscal year 2009-2010 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

**SECTION 12.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 13.** This Act shall take effect on July 1, 2009; provided that sections 2, 3, 4, 6, and 7 shall take effect on July 1, 2010.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 33

S.B. NO. 1224

A Bill for an Act Relating to Airport Concessions.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the State of Hawaii, along with the rest of the nation, is facing an economic recession that is sudden, extraordinary, and severe and one that may result in greater hardship and economic suffering than has ever been faced by the State. This is especially true for airport concessionaires who rely on air travelers for their business. Passenger counts, already weakened due to the recent history of rising fuel and ticket prices, have now dropped off even further. This decrease in the number of air travelers, coupled with the heightened security measures following the events of September

11, 2001, has restricted ticketed passengers' access to airport concessionaires, and caused airport concessionaires to realize a decline in business similar to that realized immediately after September 11, 2001.

As a result of the events of September 11, 2001, the legislature passed legislation granting relief to airport concessionaires due to the financial hardship they were suffering so that they could remain open and continue serving Hawaii's tourists and residents.

Further, the continued economic downturn after September 11, 2001, along with other global events that affected Hawaii's economy such as the Severe Acute Respiratory Syndrome epidemic that took place in March 2003, required additional action by the legislature to assist airport concessionaires. Act 128, Session Laws of Hawaii 2006 (Act 128), temporarily suspended Hawaii's statutes requiring airport concessions to be put out to sealed bid and gave the state department of transportation (DOT) the sole discretion to discuss and negotiate fixed, short-term lease extensions, under certain conditions. The legislature finds that conflicting opinions exist as to the intent of Act 128 but hereby finds and clarifies that it was not the intent or purpose of the legislature, through the passage of Act 128, to remove any rent-relief provisions then existing in any concession leases or contracts that included improvements in accordance with Act 128.

While DOT has sought to be a reasonable landlord by providing various economic relief provisions to airport concessionaires, the interdependence of our global economy has increased economic uncertainty. The fluctuations experienced in the economy due to this uncertainty have caused various concessions to suffer financial losses, losses they continue to suffer. One concession in particular has suffered and continues to suffer a loss of gross receipts of more than thirty per cent with monthly operating losses.

Obviously such losses cannot continue. Some relief provisions previously given to concessionaires must be clarified or amended, such as those provisions applicable only during times of economic emergency. These provisions allow all airport concessionaires' guaranteed rent payments to DOT to rise or fall each year depending on the concession's level of success, to avoid undue hardship and the likelihood of default on airport concession contracts due to reasons beyond their control. In fairness, the DOT should consider providing the same type of relief to all concessions and not just some concessions, such as the self-adjusting eighty-five per cent formula now provided to cover twenty airport concessions.

Unlike many local businesses which have survived during this current economic recession by cutting expenses and offering kamaaina discounts and incentives, airport concessionaires can only provide services for passengers arriving or departing on daily flights. This fact severely restricts the economic base for airport concessionaires. Furthermore, unlike some airport tenants that are able to make up for lost revenue through other means or are able to cut expenses, Hawaii's airport concessions can only appeal to the legislature for relief.

Unless relief is provided, concessionaires suffering losses may no longer be economically viable and will face the harsh consequences of defaulting on their concession contract, forfeiting their performance bond, and being barred from doing business with the State of Hawaii for five years in accordance with section 171-13, Hawaii Revised Statutes. These penalties place a tremendous hardship on these businesses due to economic conditions beyond their control. Such results would not only be devastating for the concessionaire but for the State as well due to disruption in services and employee layoffs at airport concessions, and since the State likely will only be able to find a replacement concessionaire who will pay the State significantly-reduced rents for years to come. As relief for airport

concessionaires cannot be simply granted or leases and contracts amended by DOT, legislative direction and authorization is necessary.

Economic hardship for the State, as well as airport concessions, is likely to increase in future months and it could take years for an economic rebound to occur. However, these businesses in all fairness and for public purposes should continue to provide services to our visitors, for the sake of our tourist industry and to our residents. Like other concessions receiving rent relief or rent adjustments pursuant to their leases or contracts with the DOT, similar or other relief should be provided to concession leases or contracts not having such provisions.

The major purpose of this Act is to:

- (1) Give the governor and DOT the discretion and authority to provide relief to airport concessionaires:
  - (A) Whose leases or contracts with DOT were entered into on or after November 1, 2006, and who spent capital improving the concession premises; or
  - (B) Who, as a result of any agreement with DOT pursuant to Act 128, Session Laws of Hawaii 2006, or Act 201, Session Laws of Hawaii 2004, spent capital improving the concession premises;provided that negotiations for relief for a concession covered by this Act shall commence within ninety days, or any extension agreed to between the governor or governor's designee and a concessionaire following the mailing by the concessionaire of a written request for relief to the governor; and
- (2) Provide that in seeking relief pursuant to this Act, qualified concessionaires may only seek relief for losses of gross receipts or loss of business which occurred during periods of time starting November 1, 2006, or later.

SECTION 2. Notwithstanding any laws or provisions to the contrary, including chapters 102 and 261, Hawaii Revised Statutes, the governor, or director of transportation, if so directed by the governor, with respect to airport concessions:

- (1) Shall have the discretion and authority to provide relief to airport concessionaires:
  - (A) Whose leases or contracts were granted pursuant to chapter 102, Hawaii Revised Statutes, and were entered into on or after November 1, 2006, and who spent capital improving the concession premises; or
  - (B) Who, as a result of any agreement with the department pursuant to Act 201, Session Laws of Hawaii 2004, or Act 128, Session Laws of Hawaii 2006, spent capital improving the concession premises;provided that negotiations for relief for a concession covered by this Act shall commence within ninety days, or any agreed extension between the governor or governor's designee and a concessionaire, following the mailing by the concessionaire of a written request for relief to the governor;
- (2) Shall have the discretion and authority, without limitation, to reach a relief agreement with the concessionaire to extend the term of the lease or contract, grant or modify existing relief provisions, adjust rent, and otherwise add to, modify, and amend any of the terms of the concession lease or contract;

- (3) Shall have the discretion and authority to grant similar and fair relief to a concessionaire whose concession has suffered operating losses, reduced business, or other losses, for any period starting on or after November 1, 2006;
- (4) Shall take into account any prior rent relief granted to a concessionaire pursuant to this Act or by any governmental agency to avoid the duplication of relief benefits; and
- (5) Shall have the discretion and authority to provide relief only for the period of time on or after November 1, 2006, that a concession lease or contract was or remains in effect.

SECTION 3. The relief provided for by this Act shall be provided as long as and to the extent that such relief does not violate any applicable federal laws and regulations and does not jeopardize the receipt of any federal aid or impair the obligation of Hawaii's department of transportation to the holders of any bond issued by Hawaii's department of transportation.

SECTION 4. To the extent necessary to take action, effectuate, and fulfill the purpose and intentions of this Act including the relief to be provided, the effects of section 171-13, and chapters 102 and 261, Hawaii Revised Statutes, as well as any other statutory provisions or any rules that may be in conflict with this Act, shall be deemed waived and not applicable.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

## ACT 34

S.B. NO. 1665

A Bill for an Act Relating to Higher Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's community colleges can play a critical role in the economic recovery and revitalization of the State, from supporting the individual worker going back to school for enhanced career opportunities to helping companies and nonprofit organizations change the way they do business in these difficult economic times.

Community colleges are at the forefront of workforce training both locally and across the United States. Nationally, fifty-nine per cent of new nurses and a majority of new health care workers are educated at community colleges. Nearly eighty per cent of firefighters, law enforcement officers, and emergency medical technicians are credentialed at community colleges. And ninety-five per cent of businesses and organizations that employ community college graduates recommend and support community college workforce education and training programs.

In Hawaii, enrollment in the community colleges has grown by ten per cent in the past year, with the seven campuses serving a record twenty-eight

thousand five hundred ninety-one students. Hawaii's community colleges have been in the forefront of helping employers improve their operations and overall efficiency through training programs. For example, during the five months that a first time supervisory training program was offered, over three hundred thirty individuals participated in the program, saving businesses \$71,000 through discounted tuition fees. And in response to mass layoffs at Aloha Airlines, ATA, Molokai Ranch, and Weyerhaeuser, \$70,000 was allocated from the community college rapid response fund to help displaced workers. Eligible for a one-time fifty per cent tuition scholarship (up to \$500 per displaced worker), eighty-four individuals took advantage of this program to enhance their job skills during the fall of 2008, with more students expected to enroll in the spring 2009 semester.

Hawaii's community colleges are poised to help both employees and employers prepare to change the way they work. Employers will need to consider downsizing, cross-training, identifying efficiencies, and developing new business models to survive and to preserve as many jobs as possible. Employees will need access to affordable training and professional services that can be delivered in a timely manner.

The purpose of this Act is to enhance the workforce development capacity of Hawaii's community colleges by establishing a skilled worker and business development center to provide workforce development to meet the rapidly evolving needs of both employers and employees.

The skilled worker and business development center shall be established at each community college and shall consist of programs including job search assistance, job referral, placement assistance, reemployment services to unemployment insurance claimants, and recruitment services to employers with job openings.

This Act makes an appropriation to the University of Hawaii to establish and implement the skilled worker and business development center, provided that a specific amount of the appropriation is allocated for each community college to implement programs within the skilled worker and business development center as they deem most appropriate for the particular community they serve.

Additionally to the extent possible, appropriated funds shall be from moneys received by the State pursuant to section 209 of the Job Creation and Workers Assistance Act of 2002, commonly referred to as the Reed Act. The University of Hawaii may also expend moneys appropriated to it by the legislature and additional revenues generated to cover the cost of effectuating this Act to the extent that federal moneys are not permitted to be used under the requirements of the Reed Act.

**SECTION 2.** (a) There is established under program ID UOH 800, University of Hawaii community colleges, a skilled worker and business development center to develop curriculum to assist businesses and nonprofit organizations retrain and cross-train workers to adapt to the economic downturn and new technology. The skilled worker and business development center may be modeled after the Pacific center for advanced technology training, which is a not-for-profit consortium of the University of Hawaii community colleges.

The skilled worker and business development center shall provide workforce development programs, including:

- (1) Facilitated self-help courses that work with employees to reassess skill sets, obtain additional training, and consider new fields of work following a layoff or loss of employment for other reason;
- (2) Affordable re-training and cross-training programs to assist specific small business and nonprofit organizations that are in the process of reorganizing their business plan or structure;

- (3) Specialized training courses to assist workers in adapting to work-place changes, provided that the necessity of the courses shall be supported by empirical and statistical data; and
  - (4) Other permissible program services pursuant to the Wagner-Peyser Act of 1933.
- (b) In addition to providing workforce development, the skilled worker and business development center shall include a two-fold counseling component providing:
- (1) Assistance to businesses and nonprofit organizations that face difficult economic times or changes in their industry; and
  - (2) Occupational and career counseling for displaced workers or other individuals.
- (c) There is established an advisory board for the skilled worker and business development center, which shall include representatives from the:
- (1) University of Hawaii community college system;
  - (2) Seven community college campuses;
  - (3) Department of education;
  - (4) County workforce investment boards;
  - (5) Hawaii Alliance of Nonprofit Organizations;
  - (6) Hawai'i Community Foundation;
  - (7) Hawaii Business Roundtable Incorporated;
  - (8) Chamber of Commerce of Hawaii;
  - (9) Small Business Administration; and
  - (10) United States armed forces in Hawaii.
- (d) The skilled worker and business development center shall submit a report to the legislature no later than twenty days prior to the convening of the 2010 regular session setting forth, at minimum, the progress achieved regarding the establishment and start-up of the skilled worker and business development center; the development plan for the skilled worker and business development center; funding options, recommendations, and requirements for the skilled worker and business development center and the specific programs thereunder at the various community colleges. Funding options shall include funds appropriated pursuant to section 383-123(b), Hawaii Revised Statutes, other state funds, private funds, federal grants, and self-generating income of the University of Hawaii.

Thereafter, the skilled worker and business development center shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session detailing the training and counseling programs, the numbers of businesses, nonprofit organizations, and individuals participating in the center programs, and the usage of Reed Act funds and other moneys from other sources used for the skilled worker and business development center.

**SECTION 3.** (a) There is appropriated out of the unemployment trust fund from moneys deposited pursuant to section 383-123(b), Hawaii Revised Statutes, the sum of \$2,400,000 or so much thereof as may be necessary for fiscal year 2009-2010 to assist in the establishment and start-up of the skilled worker and business development center and the development of its skills-based program, including curriculum design and counseling services; provided, however, that \$200,000 shall be provided to each community college of the University of Hawaii system to implement skills-based programs deemed appropriate by each community college consistent with the skilled worker and business development center.

The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act; provided that the funds shall

be expended in conjunction with the University of Hawaii through the rapid response fund established under program ID UOH 800, University of Hawaii community colleges.

(b) To the extent that moneys appropriated pursuant to subsection (a) are not permitted to be used to effectuate this Act, the University of Hawaii may also expend moneys previously appropriated to it by the legislature and additional revenues generated.

**SECTION 4.** If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned.

**SECTION 5.** This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)



**COMMITTEE REPORTS ON BILLS ENACTED**



**TABLES SHOWING EFFECT OF ACTS**



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#### Notes

1. Vetoed on July 14, 2009 and overridden on July 15, 2009.
2. Became law without the Governor's signature.
3. Vetoed and overridden on July 15, 2009.
4. Vetoed on July 10, 2009 and overridden on July 15, 2009.
5. See also Senate Floor Amendment 19 and House Floor Amendment 14.
6. See also Senate Floor Amendment 10 and House Floor Amendment 7.
7. Vetoed on May 7, 2009 and overridden on May 8, 2009.
8. See also Senate Floor Amendment 16 and House Floor Amendment 6.
9. See also House Floor Amendment 3.
10. See also Senate Floor Amendment 14 and House Floor Amendment 11.
11. See also Senate Floor Amendment 12 and House Floor Amendment 9.
12. Vetoed on July 6, 2009 and overridden on July 15, 2009.
13. See also Senate Floor Amendment 13 and House Floor Amendment 10.
14. See also Senate Floor Amendment 15 and House Floor Amendment 12.

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2009 Regular and Special Sessions

Key: Am = Amended \_\_\_\_\_ = Section number  
N = New to be assigned in  
R = Repealed HRS Supplement  
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[illegible]





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